THE LAW AFFECTING FOREIGNERS IN EGYPT

Printed by Wm. Green & Sons, *Edinburgh*
June 1907

THE LAW AFFECTING FOREIGNERS IN EGYPT.

AS THE RESULT OF THE CAPITULATIONS, WITH AN ACCOUNT OF THEIR ORIGIN AND DEVELOPMENT.

BY

JAMES HARRY SCOTT, B.A., LL.M., ADVOCATE,

LECTURER AT THE KHEDIVIAL SCHOOL OF LAW, CAIRO.

REVISED EDITION.

EDINBURGH:

WILLIAM GREEN AND SONS,

LAW PUBLISHERS.

1908.

CONTENTS

ERRATA.

Page 3, note 3, l. 3, *for* 1884, *read* 1584.

„ 73, l. 33, *for* submitted, *read* subjected.

„ 101, note 1, *for* Cogordon, *read* Cogordan.

„ 107, note 1, *for* Cogordon, *read* Cogordan.

„ 164, note 2, *for* Ransas, *read* Rausas.

„ 259, l. 31, *for* Tanzmiat, *read* Tanzimat.

„ 260, l. 13, *for* Berah, *read* Berat.

INTRODUCTION

THE interest which is at present centred in Egypt would, under normal circumstances, justify the discussion of the early history and development of the Capitulations; but since the publication of Lord Cromer's[1] proposals for the modification of the system of justice and legislation, at present in force in reference to foreigners resident in Egypt, the subject has assumed an enhanced importance. Readers of Lord Milner's "England in Egypt" are already familiar with the system of paradox which prevails in Egypt; but, even among the resident Europeans, there are few who fully understand the extent of complication which exists in the Egyptian legislative and judicial systems, at least in so far as they affect foreigners. This system has now become so complicated that it threatens to prevent useful legislation, and already, too frequently, ends in a denial of justice. The system is a product of the Capitulations. This being generally admitted, it is frequently asked, "Why, then, are the Capitulations not abolished?" They are not abolished because they contain certain valuable privileges which alone make it possible for Europeans to live in security within the territories of Egypt. Abuses, which may be traced directly to the Capitulations, undoubtedly exist, but they also contain certain essential privileges. It would be madness for the foreigners "to abandon their existing privileges without any adequate safeguards being provided to obviate a recurrence of these evils, which the Capitulations are intended to prevent."[2] Abolition is out of the question, but modification would be alike beneficial to the indigenous population and the foreigner resident in Egypt. When we have traced the origin and development of the Capitulations we shall be better able to describe the present legal position of foreigners, which exists as a result of these Capitulations, and also to consider in what way this system may be modified.

[1] Lord Cromer's Report, Egypt, No. 1, 1906.

[2] *Ibid.*

The rights, privileges, and immunities which are implied in the word "Capitulation" have changed considerably since the term was first used. The earliest Capitulations were grants of special privileges extended to foreign merchants while trading within the territories of the grantor. At a time when Private International Law did not exist, and when not only was the foreign law unknown, but the law of each State took no account of foreigners, who themselves were distrusted, and whose entrance was discouraged, a system such as this was essential if a permanent commerce were to be established, especially in the Eastern States of the Mediterranean. The word Capitulation is derived from the Latin "Caput" or "Capitulum," and its origin is due to the style of the earlier grants, which were divided into "heads" or articles. The grantor did not "capitulate" in the modern sense, although the inferior legal status of the States which are at present regulated by Capitulations has encouraged this belief. In the original Capitulations the grantor declares, in grandiloquent terms, the importance of his position; it is the grantee who "prays," or "begs," or "complains," and the grantor who of his "humanitie and gracious ingraffed disposition" promises redress. Nor were these privileges to be obtained without a price: there is an anecdote which well illustrates the position. A certain ambassador had long sought the renewal of the privileges formerly accorded to his Sovereign. He was at length permitted to enter the presence of the Sultan's Grand Vizier, who sat near an open window, a parchment lying on the table at his side. Again and again the wind swept the parchment away, till at length the Grand Vizier placed his purse on it, and called the attention of the ambassador to how easily the parchment, which contained the privileges desired, was swept away with each gust of wind, until it was properly weighted. The presents brought by the ambassadors were not the least important part of the negotiations. But, even when properly weighted, these Capitulations were only valid during the lifetime of the grantor, and had to be renewed by his successor; and it was to these repeated renewals that the most important extensions in the privileges originally granted were mainly due.

The privileges accorded by the early Capitulations were such as were necessary to commerce, and as such undoubtedly were as

beneficial to the subjects of the grantor as to the merchants of the grantee, since without them commerce would have been impossible. They were granted by the rulers of Christian States as well as by Mohammedan princes. The earliest Capitulations, which we shall discuss, were granted by the Christian Kings of Jerusalem to the merchants of the Italian Republics of Venice, Genoa and Pisa. The system of justice and taxation practised in the Kingdom of Jerusalem, under the Crusaders, was based on the Feudal system, which was entirely foreign to the habits of the Italian merchants; they therefore begged and obtained the right to be exempt from taxation, except the payment of customs dues, and to be allowed to be judged by their own judges, administering their own law. All this was granted them, as well as the right to live in special quarters of the Syrian towns. The same privileges were accorded by the Christian rulers of Cyprus and Constantinople, and in each case continued until the Mohammedan conquest. In Egypt under the Fatimites commerce revived about the eleventh century. It had always been favourably situated on the main route to the East, and under the Romans the through trade in spices had added greatly to the revenues of the country. After the Arab conquest in 641, and for many years thereafter, this commerce disappeared. The Mahommedan Law did not encourage more than a very transient truce with the unbeliever; but commercial necessity prevailed so far as to allow temporary passports to be granted to individual unbelievers trading within the territory of Islam. More than this was required before the old trade with Egypt, and through Egypt to the Far East, could be revived; and this extension was obtained by the adoption of the Capitulation system by the Moslem rulers of Egypt. Once adopted, the practice spread to other Moslem States—to Asia Minor and Syria; to Tripoli, Tunis, Algiers and Morocco. On the conquest of Constantinople by Mohammed II. the former Capitulations granted by the Greek Emperors to Venetians and Genoese were renewed, and the system inaugurated by Christians was continued by the Mohammedans. So far there had been no change in the essential part of the Capitulations. The privileges or immunities granted by all were practically the same: permission for merchants to enter the grantor's territory and trade there; freedom to exercise their own religion, without any vexatious regulations as to dress; the grant of a special

quarter in which to live and carry on their trade; freedom from all taxes except customs dues; immunity to some extent from local jurisdiction, and the privilege of being tried by their own consuls according to their own law; and, lastly, the right to have their successions regulated by their own rules of inheritance. These rights formed the groundwork of all the earlier Capitulations; but beside these were a number of special grants, such as permission to build a church or a bath, or the promise to redress some special grievance, generally the oppression of the custom-house officials. With the Moslem Capitulations of Constantinople came a change, and we may divide the remaining history of the Ottoman Capitulations into two periods.

The first of these periods commences with the first French Capitulation of 1535 and continues to the commencement of the nineteenth century. During this period the Capitulations cease to be purely commercial grants of privileges essential to merchants trading in a foreign country, and become political. Political in its inception, the Capitulation of 1535 contained a clause which was the cause of much political intrigue in the future. The offending clause was in the nature of a concession to the Pope and the Kings of England and Scotland, by which they might benefit by the privileges granted to France. From this there shortly grew the claim of France to "protect" all foreign merchants within the Ottoman Empire—a claim which was only defeated by the grant of Capitulations to all the other important European Powers; but in the diplomatic warfare which was waged around each new grant—a warfare which was continuous owing to the necessity of constant renewal on the accession of each new Sultan—the original privileges of the Capitulations were extended beyond what was essential to commerce. And during the same period, and before the first French claim had been defeated, France put forward the claim to protect the Christians within the Ottoman Empire—a claim which led to the Crimean War. During the nineteenth century, the second of these periods, the intervention initiated by France, under her claim to protect Christians, was imitated by other European Powers, and the Capitulations underwent yet another development. Commercial Conventions were entered into between the Porte and European Powers, thus separating what was purely commercial in the Capitulations

from the other rights and immunities. At the same time these other rights and immunities were confirmed for all time by being embodied in bi-lateral Treaties. Nor did development stop there, since Mixed Courts were introduced administering codes based on European systems, while, at the same time, the whole Turkish administration was too hurriedly remodelled on the lines of a European State. Already, at the Conference before the Treaty of Paris, there was a demand, put forward by the Ottoman representative, for the abolition of the Capitulations.

During the nineteenth century Egypt once more regained a position of practical independence from Turkey—a state of affairs which was recognised by the Sultan in the Firman of 1841 appointing Mohammed Aly hereditary Pasha of Egypt. These events mark the commencement of yet another stage in the development of the Capitulations. Extended as these privileges had been by the Sultans, they were destined to receive yet further extensions at the hands of Mohammed Aly and his successors in their attempt to purchase the favour of Europe. To such extremes did these rulers go that in 1867 Nubar Pasha, Ismaïl's Prime Minister, commenced his crusade against what he called the "Judicial Babel," which had been the result of the too lavish encouragement of European pretensions. The result was the institution of the Mixed Courts of Egypt in 1876—a reform which was almost more in the interests of foreigners than natives, to such evils did the undue extension of the Capitulations give rise. With the British Occupation a new era opened for Egypt—an era of judicious reform followed by the most unprecedented success; but now it is once more felt that a judicious modification of the Capitulations is again necessary, if reform and development are to be continued in the future as they have been in the last twenty-four years. Modification, not abolition, of the Capitulations is necessary. The original Capitulations were as beneficial to the native subjects as they were to the foreign merchants. Although abuses of privileges now occur, and although certain of the original privileges have ceased to be beneficial, there are yet certain very important rights guaranteed by the Capitulations—rights which are essential to the continued residence of Europeans in Egypt—and "the well-being of the numerous Europeans who have made Egypt their place of residence is indissolubly bound up with the well-being and prosperity of the country. I can conceive

no greater calamity to the indigenous Egyptians than that the confidence of the best elements amongst the European communities in the institutions, under which they live and thrive, should be seriously shaken."[1] The continuance of the Capitulations in a modified form is thus as much to the advantage of the Egyptians as the Europeans.

[1] Lord Cromer's Report, Egypt, No. 1, 1905.

CHAPTER I

THE TRADE BETWEEN EAST AND WEST

THE origin of the earliest form of capitulations was intimately connected with commerce. The tastes of the Roman citizens of the Empire demanded the introduction into Rome of spices and other luxuries which could alone be supplied by the Far East. The Moluccas or Spice Islands were then, as now, the home of the clove and nutmeg; the introduction of such articles into the Roman market necessitated the development of commercial intercourse with the East; trading stations were established, by the middle of the second century, along the Red Sea, on the coast of Arabia and as far as Aden and Socotra. The Eastern merchants brought their merchandise to these Roman settlements, from whence it was passed on by Egypt[1] and Alexandria to Rome. It is interesting to reflect upon the early date at which this trade route, between Europe and the East by Egypt and the Red Sea, was opened. It is probable that this route shared this commerce with that of the Persian Gulf and the Euphrates. With the decline of the Roman Empire and the rise of the Mohammedan power in Arabia, the commerce along both routes passed into the hands of the Mohammedans. That this trade had, already by the eighth century, developed to extraordinary proportions is evidenced by the number of Mohammedan colonies which were then to be found in the East.[2] Considering that the

[1] At a much later date we find evidence of exactly the same trade. "In this citie (Cairo) is great store of marchandize, especially pepper, and nutmegs, which came thither by land, out of the East India." "The voyage passed by sea into Ægypt by John Evesham, Gentleman, 1586."—Hakluyt, vol. vi. p. 37.

[2] Mr. Hugh Clifford, in his recent book, "Further India," strongly supports this contention. "Muhammedan colonies were scattered broadcast over the Eastern world, and in 758 the followers of the Prophet in China were sufficiently numerous to be able to cause serious disturbances in that country. The existence of these colonies, too, made it possible for a Muslim to travel with ease in almost any quarter of the East"—p. 15.

Mohammedan religion had not yet been in existence for a century, the intercourse between the Mohammedan sailors and these islanders must have been intimate and frequent. Another trade route existed between the East and West, our evidence of which points to a comparatively similar date.[1] This third route was that followed by Marco Polo in 1296, the overland route across Siberia to China. It is interesting to note in passing that Marco Polo himself bears testimony to the intercourse of the Mohammedans with the East. In speaking of the Island of Sumatra he says: "This kingdom, you must know, is so much frequented by the Saracen merchants that they have converted the nation to the Law of Muhammet."

By these three routes the trade of the East was brought to the Western markets. By the overland route to Constantinople; by the Indian Ocean to the Persian Gulf, and from thence by the Euphrates to the ports of the Levant; or by the Indian Ocean and the Red Sea to Egypt and Alexandria. From these gateways of the East the precious freights were brought by the Italian merchants to the ports of Europe. After the fall of the Roman Empire, the Venetians were the first to carry on this trade in Eastern merchandise, then followed the merchants of Genoa, Pisa, Florence, and, generally speaking, the merchants of all the Mediterranean seaports of Italy, France and Spain. Of the three routes mentioned, naturally that by the Red Sea and Egypt is of the greatest interest to us, and it seems a pity to let it pass without recalling the old popular fancy according to which the Nile took its source in Paradise, and this trade of the East was really not of earthly origin, but came direct from Heaven. Heyd describes the myth in the following words:—"On savait à peu près de tout temps, en Occident, que les épices des Indes arrivaient dans la Méditerranée par le Nil, mais tout ce qui concernait les véritables pays de production était plongé dans une profonde obscurité, de sorte que la légende put aisément s'emparer des faits dont nous venons de donner l'exposé historique. Comme tous les produits précieux de la terre, les épices devaient, dans l'imagination

[1] "The wide dissemination of Nestorian Christianity from Jerusalem, eastward to Peking, which had taken place by the fourteenth century, argues a closer intercourse between the West and East, *via* the overland route, than is generally recognised, while the celebrated inscription discovered at Singan-fu proves that the historical doctrine was publicly preached in China, and received sanction and encouragement from the authorities, as early as the seventh century."—"Further India," p. 83.

populaire, venir directement du Paradis. Pour elle, le fleuve du Paradis appelé par l'Ecriture le Géhon et le Nil, c'était tout un; elle ne connaissait aucun intermédiaire. Les épices, disait-on, croissaient sur les bords du Nil même, tombaient des arbres dans le fleuve, dont le courant les apportait dans les régions connues et les Egyptiens les tiraient de l'eau avec leurs filets. . . . On en était toujours à se figurer l'existence d'une communication ininterrompue entre l'Inde et l'Ethiopie. . . ."[1] An echo of the same story is found in the account of Egypt written by Bernard de Breydenbach, who, after visiting the Holy Land, travelled through Egypt in the year 1483.[2]

This trade was of the highest importance to Egypt,[3] and the loss of her prestige, which subsequently brought about her conquest by Turkey, synchronises with the discovery and development of the Cape route by the Portuguese. El Ghuri, who was at that time Sultan of Egypt, realised how this discovery was affecting the trade of his country, and impelled by the Venetians, who were also considerable losers by the change of route, fitted out a fleet to attaek the Portuguese in the Indian Ocean. Further instigated to revenge, or finding that Europeans were of no further service to him, he commenced the persecution of Christians within his own territories and in the Holy Land. Three centuries later the rulers of

[1] Heyd, tome i. p. 383.

[2] "Est autem Nylus paradisi fluvius maximus et nobilissimus qui in tres dividitur partes principales, et in tribus distinctis locis influit in mare. . . . A multis sepe soldanis per superiora tempora missis viris quibusdam cum navibus provisis victualibus, que ad biennium vel triennium sufficerent studiose inquisitum est et perscrutatum ubi Nylus suam haberet originem primordialem. Sed qui missi fuerant post exactum biennium vel triennium cum etiam ultra Indiam longe processissent redeuntes dicebant se finem seu terminium Nyli nullatenus invenire potuisse nisi quod ab oriente emanat. Dicebant etiam ultra Indiam nullam esse hominum habitationem, sed terram prorsus inhabitabilem et tantum ibi solis esse ardorem quem ferre nequaquam potuissent. In hoc etiam fluvio reperitur in India lignum illud preciosum et durissimum quod albanum dicitur, proveniens ex paradiso per hujus fluvii inde decursum sive descensum."—"Sanctarum Peregrinationem," Bernardi de Breydenbach.

[3] Hakluyt, vol. v. pp. 273, 274, gives an account of this trade through Egypt about 1884. "Commonly the caravans come thither in October from Mecca to Cairo, and from thence to Alexandria, where the merchants be that buy the spices, and therefore the spices are brought most to Alexandria, where each Christian nation remaineth at the consuls' houses. Yet oftentimes the Christians go up to Cairo to buy drugs and other commodities there, as they see cause."

Egypt realised that, by the aid of modern inventions, the old trade route through Egypt to the East might be revived; and thus by the building of railways, and later by the construction of the Suez Canal, the old route was re-opened, and the foundations of a new prosperity for Egypt were laid. In this connection, also, it will be interesting to watch the future of that other trade route by the Persian Gulf and the Euphrates. The re-opening of the third route, as typified in the Siberian Railway, has already led to the most startling results; and has done much to remove the political centre of gravity to the Far East. The New Panama Canal will also not be without effect in this connection.

CHAPTER II

PRIVILEGES GRANTED TO FOREIGN MERCHANTS BY THE CHRISTIAN STATES OF THE EAST

The trade of the East was brought to Constantinople, to the ports of the Levant, and to Alexandria by the Eastern merchants, from thence it was carried by European traders to the ports of Italy, France and Spain. So long as the great Roman Empire had remained united no difficulty could have been experienced, as these gateways of the East were in Roman hands. But, after the dissolution of the Roman Empire, these ports fell into unfriendly hands, and the Western merchants had to enter into special relations with the rulers along the eastern shores of the Mediterranean, in order to secure their own safety. But commerce was not the only attraction which led Europeans to the East. Great numbers of religious pilgrims appear to have flocked to the Holy Land. It is in connection with these pilgrims that we find the first example of a grant of privileges extended by an Eastern State to Europeans; this grant was the result of the friendship between Charlemagne and the Khalif Aroun-el-Rashid. "The greatness of Charlemagne protected both the Latin pilgrims and the Catholics of the East. . . . Harun Alrashid, the greatest of the Abbassides, esteemed in his Christian brother a similar supremacy of genius and power; their friendship was cemented by a frequent intercourse of gifts and embassies; and the caliph, without resigning the substantial dominion, presented the emperor with the keys of the Holy Sepulchre, and perhaps of the city of Jerusalem."[1] The result of this friendship was that under the protection of Charlemagne pilgrims flocked to the Holy Land, and those traders who came with the authorisation of the Emperor received certain commercial facilities. On the decline of the Carlovingian Empire, this pro-

[1] Gibbon, vol. vi. p. 252. William of Tyre, l. 1, c. 3, suggests that the Holy City was as much under the rule of Charlemagne as of the Khalif: "ita ut magis sub imperatore Karlo quam sub dicto principe, degere viderentur."

tection of the Christians, together with the trade with the East, passed into the hands of the Republic of Amalfi.[1] A commercial colony was founded in Jerusalem by the merchants of Amalfi about the year 1080, and a khan, or rest-house, was built for the merchants and pilgrims of their own and of other European States.

This commercial colony at Jerusalem was not the only one in existence at this time; the citizens of Amalfi seem already to have established business centres in all the Mediterranean ports in which the commerce of the East was to be found. "Their trade was extended to the coasts, or at least to the commodities, of Africa, Arabia, and India; and their settlements in Constantinople, Antioch, Jerusalem, and Alexandria acquired the privileges of independent colonies."[2]

The Venetians were not slow to discover the advantages to be gained by securing this Eastern trade; and we read that Pietro Orselo II., Doge of Venice, sent embassies to Constantinople and the princes of Northern Africa, praying that he might be allowed to enter into commercial relations with them.[3] These negotiations were not without results, at least in Constantinople, where the Emperor Basil II., in the year 991, conceded to the Venetians important customs reductions on the arrival and departure of their ships; and, as a reward for their assistance against the Romans in 1082, Alexius I. Comnenus entirely exempted the Venetian merchants from the payment of customs dues. Early in the thirteenth century the members of the Venetian Colony at Constantinople were exempted from both the civil and criminal jurisdiction of the empire.[4]

The Crusades were among the most important influences which opened up the trade of the East to European merchants. At the close of the eleventh century Jerusalem was conquered by the Turks, and Peter the Hermit commenced his mission which led to the First Crusade. On the capture of Jerusalem by the Crusaders, in the summer of the year 1099, Godfrey de Bouillon was elected as the first Christian ruler of the Kingdom of Jerusalem; and "the reduction of the maritime cities of Laodicea, Tripoli, Tyre, and Ascalon, which were powerfully assisted by the fleets of Venice,

[1] Gibbon, vol. vi. p. 253.
[2] *Ibid.*, p. 190.
[3] Rey, p. 24, "Protection."
[4] *Ibid.*, p. 25.

Genoa, and Pisa,"[1] completed the Christian conquest of the Holy Land.

One of the first objects of the newly appointed King of Jerusalem was to establish a system of law and justice. Whether this system of law consisted of a code drawn up after "the public and private advice of the Latin pilgrims who were the best skilled in the statutes and customs of Europe,"[2] or was "a structure of customary law," built up, in the twelfth and following centuries, by the decisions of the Kings of Jerusalem,[3] is for our purposes immaterial. The result, whatever its immediate source, was the Assise of Jerusalem, "a precious monument of feudal jurisprudence."[4] To enforce the law and administer justice three courts of law were set up in Jerusalem. The first court, the Court of the Barons, was presided over by the King in person, and "all the nobles, who held their lands immediately of the crown, were entitled and bound to attend."[5] "The cognisance of marriages and testaments was blended with religion and usurped by the clergy; but the civil and criminal causes of the nobles, the inheritance and tenure of their fiefs, formed the proper occupation of the supreme court. Each member was the judge and guardian both of public and private rights."[6] The second court was presided over by a viscount as representative of the King, and was called the Court of Burgesses. "The jurisdiction of this inferior court extended over the burgesses of the kingdom; and it was composed of a select number of the most discreet and worthy citizens, who were sworn to judge, according to the laws, of the actions and fortunes of their equals."[7] The third court, a form of native tribunal, had jurisdiction in regard to the claims of the Syrians or Oriental Christians, Melchites, Jacobites, or Nestorians. Its members were "Syrians in blood, language and religion; but the office of the president, or Rais, was sometimes exercised by the viscount of the city."[8] The more important cases, in which Syrians were interested, seem, however, to have been generally transferred to the Court of the Burgesses. The Assise of Jerusalem was finally revised in 1369 for the use of the Kingdom of Cyprus; it seems also to have formed the basis of

[1] Gibbon, vol. vi. p. 314.
[2] *Ibid.*, p. 317.
[3] *Ibid.*, Appendix, pp. 555, 556.
[4] *Ibid.*, p. 317.
[5] Gibbon, vol. vi. p. 318.
[6] *Ibid.*, p. 318.
[7] *Ibid.*, p. 320.
[8] *Ibid.*, p. 321.

the judicial system of a number of other Christian principalities, founded at this time, in the Levant.

One of the first results of the establishment of Christian States in the Levant, was to open up, with renewed vigour, the far Eastern trade. The fleets of Venice, Genoa and Pisa had rendered valuable assistance to the Crusaders, and the rulers of these cities did not hesitate to demand commercial concessions as the price of these services. Thus, in 1100 the Venetians demanded of Godfrey de Bouillon the grant of a quarter in each of the cities already captured, as well as in those which might thereafter be captured, with entire freedom from all customs dues. The Genoese made similar demands in 1104, and the Pisans in the following year. Nor were these the only governments to acquire a commercial footing in the Christian States; the merchants of Marseilles and Montpellier and the Catalans each seem to have established commercial colonies in Palestine with similar commercial advantages.[1] But perhaps the most striking and, at least for us, the most interesting concession was connected with the administration of justice within these colonies of merchants. To the citizens of these southern states the feudal institutions, which were the basis of the Assise of Jerusalem, were very different from the laws to which they had been previously accustomed; in consequence, they were entirely freed from the local law and the local jurisdictions, and were placed under their own bailies or consuls, who each administered the laws of their state of origin. This immunity from local justice appears to have been general, except in regard to certain questions relating specially to commerce or maritime affairs, which were considered to be within the competence of two special local courts, the "Cour de la Fonde" and the "Cour de la Chaîne."[2]

The life of the Kingdom of Jerusalem was short. Jerusalem itself was captured by Saladin in 1187; Tyre then became the metropolis, and afterwards Acre. On the fall of Acre in 1291 the

[1] Rey (p. 27) gives a table of such concessions which he has copied from Pardessus: "Collection des lois maritimes antérieures au XVIII^e. siècle."

Genoese, at Antioch, in 1098 and 1127; at Jaffa, Cesarea and St. Jean d'Acre, in 1105; at Tripoli, 1109; at Laodicea, in 1108 and 1127.

Venetians, at Jaffa, in 1099; at Jerusalem, in 1111, 1113, 1123, 1130.

Pisans, at Jaffa, Cesarea and St. Jean d'Acre, in 1105; at Antioch, in 1108.

Marseilles, at Jerusalem, in 1117 and 1136.

[2] Rey, p. 71.

loss of the Holy Land to the Christians became final. But although of comparatively short duration, this Christian State of the East had initiated a system of law which is very similar to that established by the Capitulations. In accordance with this system foreign merchants were allowed to form colonies within the state, these colonies being separate entities governed by their own laws and administered by their own officers. A state within a state. Another result of the foundation of this Christian State was to give a vast impetus to the trade between East and West.

The fall of Jerusalem was the sign for the renewal of the crusades, and with the Third Crusade in 1191 came Richard Cœur de Lion of England. On his return from Palestine, Richard conquered the Island of Cyprus which had fallen into the hands of the Saracens.[1] The island was afterwards ceded to the Templars, who in turn sold it to Guy of Lusignan, who introduced the Assise of Jerusalem as the legal system to be applied within the island. As soon as the island fell into Christian hands the Italian merchants established their colonies, receiving the same privileges as in Palestine, namely, freedom from customs dues and a grant of a quarter in the cities. And as the same difficulty existed with regard to the legal system as had existed in Jerusalem, they received a similar immunity from the local law and the local courts, and were allowed to be governed by their own law, administered by their own officers.

Constantinople did not remain uninfluenced by the Crusades. The general stimulus, given by the Crusades, to the commerce between East and West affected Constantinople as well as the Levant. The merchants of Venice had received privileges in regard to jurisdiction and commerce early in the tenth century; they were followed in the twelfth century by the merchants of Genoa and Pisa who obtained similar privileges.[2] The course of the Fourth Crusade of 1204 gave the Venetians a great advantage over their rivals; joining with the Crusaders in their filibustering expedition, they

[1] In Hakluyt's "Voyages," vol. v. p. 125, we find, "A briefe description of the Isle of Cyprus," which mentions Richard's conquest. "The selfsame island was sometime also English, being conquered by King Richard the First in his voyage to Hierusalem in the yeare of our Lord 1192 . . . who afterwards exchanged the same with Guy of Lusignan, that was the last christened King of Hierusalem, for the same kingdome. For the which cause the Kings of England were long time after called Kings of Hierusalem."

[2] Heyd, vol. i. pp. 193, 203.

took part in the capture of Constantinople, and assisted in establishing the Latin Empire.[1] In the division of the Greek provinces, the Emperor Baldwin only received a quarter, while the Crusaders and Venetians divided the remainder. Dandolo, Doge of Venice, "was proclaimed despot of Romania;" his successors inheriting this possession till the middle of the fourteenth century. The Venetians "possessed three of the eight quarters of the city;" and Adrianople also formed a part of their possessions. "Their long experience of the Eastern trade enabled them to select their portion with discernment . . . it was the more reasonable aim of their policy to form a chain of factories and cities and islands along the maritime coast, from the neighbourhood of Ragusa to the Hellespont and the Bosphorus."[3] The Latin Empire, however, was doomed to be but shortlived. The Venetians had sided with the Latins, their rivals the Genoese threw in their lot with their enemies. "Seeing that the Venetians . . . still maintained their connection with the empire on the Bosphorus and, indeed, continued to be the principal source of such strength as it possessed, Michael, to the great indignation of the pope and the West, made an alliance with their rivals, the Genoese, an alliance which was the foundation of their supremacy in trade in the Black Sea."[3] The Genoese received in 1261 a quarter in the city as a reward for their services in its recapture and in the destruction of the Latin Empire. Other Western cities tried to gain some share in the commercial advantages of the two great rivals; but Genoa and Venice maintained their supremacy up to the capture of Constantinople by the Ottoman invaders in 1453. "The rivalry (in 1350) between the two republics of Venice and Genoa was great. Each was at the height of its power, and the commerce and dominions of the empire were the principal objects of the rivalry. A hundred and fifty years earlier, there had been colonies of Amalfians, Pisans, Anconans, Ragusans, and even Germans, within the walls of the city. All these had disappeared, and Genoa the Superb and Venice, Queen of the Seas, were the sole Italian competitors for domination in or a share of the empire."[4]

In Constantinople, as in Cyprus and in the Kingdom of Jerusalem, foreign merchants had formed colonies within the city; and these

[1] Gibbon, vol. vi. ch. 50 and 51, and Pears, ch. 1.

[2] *Ibid.*, p. 416.

[3] Pears, "Destruction of the Greek Empire." E. Pears, London, 1903, p. 17.

[4] Pears, p. 76.

colonies enjoyed the possession of a partieular quarter of the eity as their own, in whieh they were governed by their own law and by their own offieers. The merchandise of these privileged eolonies was, further, either admitted free from the payment of customs duties, or on the payment of a very much redueed duty. Sueh was the position in the Christian States of the East up to the fifteenth eentury; it will now be our duty to eonsider the position of the foreign merchant in the Mohammedan States.

CHAPTER III

THE RISE OF ISLAM

THE great Roman Empire had at its zenith extended along the northern shores of Africa, and even to the southern extremities of the Red Sea; but at the commencement of the seventh century a new power appeared in Arabia, and Mohammed began to preach a religion which was to influence the whole of the Eastern Hemisphere. As Rome declined, the influence of the Arabs increased. Syria was invaded in 632, and was conquered in 638; Egypt fell in 647; Carthage in 692-698; and finally the whole of the northern coast of Africa had become Mohammedan by 709. Nor did Europe escape, for Spain felt the burden of the Mohammedan rule.[1]

The success of the Mohammedan power affected the merchants of the Christian and European States who had been accustomed to carry the Eastern trade across the Mediterranean. A new problem was raised. Europe was the market of the East; the prosperity of the coastal towns of Syria and Egypt depended upon this European market; in fact, the prosperity of the whole of Arabia was intimately connected with the uninterrupted continuation of this commerce. The carrying trade from the East to the Mediterranean had been in the hands of these Arabian peoples, while that from the Levantine and Egyptian ports to Europe had been in the hands of European merchants. Their Western conquests must have fully occupied the Arabs; the western part of this trade, if it was to continue, must therefore remain in the hands of Europeans. But if these European merchants had, even in Christian States, required special privileges and guarantees in regard to their security, and special immunities in reference to justice; much more were these guarantees and immunities necessary when dealing with a non-Christian Power. What, then, was the position of a foreigner under Mohammedan Law?

According to Mohammedan Law there is no division into states; the manner of determining the "nationality" of any particular

[1] Gibbon, vol. v. ch. 51.

individual is not by asking to what state or territory he is attached, but by discovering his religion, by asking whether he is a Mohammedan or not. The question is one of creed. For this purpose the Mohammedan Law primarily divides the whole world into two classes — those who are Mohammedans, and those who are not. The world is divided into two parts, or houses—the Dar-el-Islam, or the House of the Mohammedans, and the Dar-el-Harb, or the House of the Enemy.[1] The division is simple, and the fundamental principle which governs the relations between the two Houses is equally simple. The first and chief duty of all true Mohammedans is to propagate the religion of Islam, and the manner of performing this duty is to wage perpetual war against all unbelievers in order to convert them: to the Arabs the word "harbee" not only meant an unbeliever, but an enemy. Until the whole human society should be organised in conformity with the law revealed to Mohammed, and until it should be governed by one head, namely, the representative of Mohammed, there could be but one policy, and that was perpetual war against the unbeliever. The duty of all believers was to continue to war against all unbelievers until the Dar-el-Harb was completely absorbed by the Dar-el-Islam.

This primary duty of all true believers is clearly stated by a learned Mohammedan lawyer of the Hanafite School, who died in the year 428 of the Mohammedan era.[2] "War with those that are not of Islam is a work enjoined by God. . . . When the Moslems go into the enemy's country and surround a city or stronghold to besiege

[1] "Every infidel in the Mussulman religion is termed Kafir, or infidel, and infidels who are not in subjection to some Mussulman State are generally treated by Moohummudan lawyers as hurbees, or enemies. . . . A country that is subject to the government of the Mussulmans is termed Dar-ool-Islam, or a country of safety or salvation; and a country which is not subject to such government is termed Dar-ool-hurb, or a country of enmity. Though Moohummudans are no longer under the sway of one prince, they are so bound together by the common tie of Islam that as between themselves there is no difference of country, and they may therefore be said to compose but one Dar. And in like manner, all who are not Moohummudans being accounted as of one faith when opposed to them, however much they may differ from each other in religious belief, they also may be said to be of one Dar. The whole world, therefore, or so much of it as is inhabited and subject to regular government, may thus be divided into the Dar-ool-Islam, which comprehends Arabia and all other countries subject to the government of the Mussulmans, and the Dar-ool-Hurb, which comprehends all countries that are not subject to Mussulman government."—Baillie, p. 169.

[2] See "U. S. Consular Report," 1881, p. 25.

it, they shall invite the dwellers therein to embraee Islam. If they eomply, the Moslems shall give up fighting them; but if they refuse, they shall eall them to fulfil the tribute. . . . It is laudable to again invite those who have been onee invited to Islam, but have refused. If, however, they shall then too refuse, the Moslems shall, after having implored Divine aid against them, assail them with instruments of war, burn down their houses, let out their water-pools, and destroy their crops." The instruetions of the learned doetor to this ehureh militant are sufficiently elear; but let us turn for a moment to the fountain head, and see what the Koran itself has to say on this subjeet: "Fight for the religion of God against those who fight against you . . . and kill them wherever ye find them, and turn them out of that whereof they have dispossessed you; for temptation to idolatry is more grievous than slaughter; yet fight not against them in the holy temple, until they attaek you therein; but if they attaek you, slay them there. This shall be the reward of the infidels. But if they desist, God is graeious and mereiful. Fight, therefore, against them until there be no temptation to idolatry, and the religion be God's; but if they desist, then let there be no hostility, except against the ungodly."[1] "When ye eneounter the unbelievers, strike off their heads, until ye have made a great slaughter among them; and bind them in bonds; and either give them a free dismission afterwards, or exaet a ransom; until the war shall have laid down its arms. This shall ye do. Verily, if God pleased, he eould take vengeaunce on them without your assistanee; but he eommandeth you to fight his battles, that he may prove the one of you by the other. And as to those who fight in defenee of God's true religion, God will not suffer their works to perish; he will guide them, and will dispose their heart aright; and he will lead them into paradise, of whieh he hath told them. O true believers, if ye assist God by fighting for his religion, he will assist you against your enemies, and will set your feet fast; but as for the infidels, let them perish, and their works shall God render vain."[2] The duty is a plain one, and it is elsewhere summed up, together with its ultimate objeet. "Fight against them until there be no opposition in favour of idolatry, and the religion be wholly God's."[3]

Mohammedan Law, however, makes a eertain distinetion between the members of the Dar-el-Harb. There were two elasses of Harbee—

[1] Sale's Koran, p. 20.
[2] *Ibid.*, p. 375.
[3] Sale's Koran, p. 129.

the Kitabee and the Wattanee. The first included such persons whose religion was contained in a kitab or book, among whom were the Christians and Jews; the Wattance were simply idolaters. On the conquest of territory of the Dar-el-Harb, if the conquered inhabitants were Kitabee they received certain privileges if they made a voluntary surrender; while in the case of the Wattanee there was only one choice, that between the adoption of the Moslem religion or death. In both cases, if there had been no voluntary surrender, but resistance had been continued to the last, the Mohammedan conquerors were free to put them to death.

The Kitabee who voluntarily surrendered became a Rayah or Zimmee,[1] and was a subject of his Mohammedan conquerors. His life was preserved, and he kept his own religion; and it must be remembered that in Mohammedan Law religion includes also law and status. The first Zimmee are described by Margoliouth in his life of Mohammed, where he also mentions their origin.[2] Mohammed "decided to leave the Jews in occupation on payment of half their produce. . . . These Jews of Khaibar were then to be the first dhimmis, or members of a subject caste, whose lives were to be guaranteed, but whose earnings were to go to support the true believers . . . the Jews, though they retained their lives and lands, forfeited their goods—all save their Rolls of the Law . . . The dhimmis or subject races derived their name from the relation of client and patron, which, as we have seen, was of great consequence in Arabia; the client being ordinarily a man who for some reason or other put himself under the protection of a tribe not his own, which, doubtless for some consideration, defended him from his enemies. Thus the Moslems undertook to protect and fight for the non-Moslem races who acknowledge their supremacy, though they rejected their Prophet. Severe penalties were threatened against Moslems who killed members of those protected communities. His recognition of the principle that a money payment would serve instead of a religious test shows us how little of a

[1] "The ahl, or people of a country in the Dar-ool-Islam, may be Mussulmans or Zimmees—that is, persons who, though unbelievers in the Mussulman religion, have by submission to the jizyut, or poll-tax, become entitled to the free exercise of their own religion, and generally to the same privileges as their Mussulman fellow-subjects."—Baillie, p. 171.

[2] "Mohammed and the Rise of Islam," D. S. Margoliouth, London, 1905, pp. 358-59.

fanatic the Prophet was at heart." A proclamation of Mohammed to his infidel neighbours in Arabia is also of interest in this connection.[1] "And whoso pays alms, and testifies that he is a Moslem, and helps the believers against the idolaters, he is one of the believers, having the same rights and the same duties as they, and enjoys the protection of God and of His Apostle. And if any Jew or Christian become a Moslem, he is one of the believers, with the same rights and duties as they. But if a man persist in his Judaism or Christianity, he shall not be made to leave it, but shall pay the tribute, a dinar of full weight for every male or female of mature age, free or slave, out of the price of the garments which they weave, or the equivalent thereof in garments; and whoso pays this unto the apostle of God, he shall enjoy the protection of God and His Apostle."

A Zimmee, although a subject, was not on a perfect footing of equality with the subject who was also a true believer; certain restrictions were made in regard to the character of his dress,[2] the performance of his religious duties, his dwelling and his mode of life;

[1] Margoliouth, pp. 439-41. Extract from letter of Mohammed to "Al-Harith, son of Abd Kulal, and Nu'aim, son of Abd Kulal, and Al-Nu'man, chieftains of Dhu Ru'ain, Ma'afir, and Hamdan." Margoliouth says of this letter: "The genuineness of this letter is probably beyond suspicion."

[2] "It behoves the Imam to make a distinction between Mussulmans and Zimmees in point both of dress and of equipage. It is therefore not allowable for Zimmees to ride upon horses, or to use armour, or to use the same saddles and wear the same garments or head-dresses as Mussulmans; and it is written in the Jama Sagheer that Zimmees must be directed to wear the Kisteej openly on the outside of their clothes (the Kisteej is a woollen cord or belt which Zimmees wear round their waists on the outside of their garments); and also that they must be directed, if they ride upon any animal, to provide themselves a saddle like the panniers of an ass. . . . It is to be observed that the insignia incumbent upon them to wear is a woollen rope or cord tied round the waist, and not a silken belt. . . . It is requisite that the wives of Zimmees be kept separate from the wives of Mussulmans, both in the public roads and also in the baths; and it is also requisite that a mark be set upon their dwellings, in order that beggars who come to their doors may not pray for them. The learned have also remarked that it is fit that Zimmees be not permitted to ride at all, except in cases of absolute necessity; and if a Zimmee be thus, of necessity, allowed to ride, he must alight whenever he sees any Mussulmans assembled; and if there be a necessity for him to use a saddle, it must be made in the manner of the panniers of an ass. Zimmees of the higher orders must also be prohibited from wearing rich garments. . . . The construction of infidel places of worship in a Mussulman territory is wrongful; but those already founded may be repaired."—Hedaya, vol. ii. bk. ix. ch. 8.

he was further liable to the payment of two taxes from which the Mohammedan himself was exempt, the capitation tax and a tax on property. There were also certain restrictions in regard to judicial matters which were of considerable importance; he could not, for instance, give evidence in a Mohammedan court of law against a believer.

An excellent historical example of the working of these rules, which regulate the conduct of the Mohammedan conquerors towards the defeated members of the Dar-el-Harb, is given in Professor Butler's account of the Arab conquest of Egypt. The envoys sent by Cyrus from Babylon (*i.e.*, Cairo) to negotiate with 'Amr for its surrender were detained in the Arab camp for two days. "'Amr then dismissed them with the usual offer of terms. 'Only one of three courses is open to you: (1) Islâm, with brotherhood and equality; (2) payment of tribute, and protection, with an inferior status; (3) war till God decides between us.'"[1] The struggle appears to have been renewed, but when the Romans again asked for terms, the terms offered were exactly the same. Professor Butler thinks it "somewhat surprising to find that the terms offered by 'Amr remained the same, but there is no reason to think that they varied either now or at any later period in the war."[2] The final result was that the city capitulated, and a "treaty of surrender was drawn up, under which it was agreed that in three days' time the garrison should evacuate the fortress . . . that the fortress itself, with all treasure and war material, should be delivered over to the Arabs, and that the town should become tributary."[3]

'Amr then proceeded to the conquest of the rest of Egypt. In the autumn of the year 641 Cyrus, who had been withdrawn from Egypt by Heraclius, returned to Alexandria, and shortly afterwards went to Cairo to negotiate with 'Amr for the final surrender of Egypt. A treaty was signed on 8th November 641.[4] "Its terms are somewhat variously reported, but the prineipal covenants are given by John of Nikiou as follows:—

"(1) Payment of a fixed tribute by all who came under the treaty.

"(2) An armistiee of about eleven months, to expire the first day of the Coptic month Paophi, *i.e.*, 28th September 642.

[1] Butler, "The Arab Conquest of Egypt," p. 256.
[2] *Ibid.*, p. 261.
[3] Butler, "The Arab Conquest of Egypt," p. 272.
[4] *Ibid.*, p. 320.

"(3) During the armistice the Arab forces to maintain their positions, but to keep apart and undertake no military operations against Alexandria; the Roman forces to cease all acts of hostility.

"(4) The garrison of Alexandria and all troops there to embark and depart by sea, carrying all their possessions and treasure with them; but any Roman soldiers quitting Egypt by land to be subject to a monthly tribute on their journey.

"(5) No Roman army to return or attempt the recovery of Egypt.

"(6) The Muslims to desist from all seizure of churches, and not to interfere in any way with the Christians.

"(7) The Jews to be suffered to remain at Alexandria.

"(8) Hostages to be given by the Romans, viz., 150 military and 50 civilian, for the due execution of the treaty." Professor Butler further adds: "Under the first article a general security was given for the life, property and churches of the Egyptians, who were also to be allowed the free exercise of their religion. For the payment of tribute and taxes constituted them a protected people (ahl adh dhimmah) with a status implying these privileges. The tribute was fixed at two dinârs per head . . . but in addition to the capitation-tax, a land-tax or property-tax was imposed."[1]

No better example could be given of the treatment of Kitabee who surrender to their Mohammedan conquerors and become Zimmee. 'Amr's statement to the envoys of Cyrus sums up the possible alternatives open to them, in accordance with Mohammedan Law; and these were the only terms he had power to offer. The terms offered by Saladin on the surrender of Jerusalem in 1187 are similar. "He consented to accept the city, and to spare the inhabitants. The Greek and Oriental Christians were permitted to live under his dominion; but it was stipulated that in forty days all the Franks and Latins should evacuate Jerusalem, and be safely conducted to the seaports of Syria and Egypt."[2] A third example of the same kind we shall find in the capture of Constantinople.

The Mohammedan policy of perpetual warfare against all unbelievers, until they were all either converted or exterminated, was a counsel of perfection difficult to realise to its full extent.

[1] Butler, "The Arab Conquest of Egypt," p. 321.

[2] Gibbon, vol. vi. p. 346.

"If they incline unto peace, do thou also incline thereto; and put thy confidence in God, for it is He who heareth and knoweth."[1] This passage of the Koran suggests more pacific measures. It is beyond our province to discuss whether this counsel was due to the realisation of the fact that continual warfare was a physical impossibility, when that warfare had to be waged by a smaller against a larger body of men; or whether it was due to the realisation of the material benefits which were to be gained by commercial intercourse even with Harbee. The result was that we find a number of passages in the works of Mohammedan lawyers in which it is distinctly permitted to the believer to make a truce with the unbeliever. But the primary duty is never lost sight of; this peace is only a temporary truce, and when the truce is terminated the old warfare is to be renewed with unabated vigour. "Peace," said the Hedaya,[2] "may be granted to the unbelievers, *but it is only a truce*, and may be, if advantageous, broken; notice, however, being previously given to the enemy of the rupture." Kudûri, a learned Mohammedan lawyer, writes in very similar terms: "If it is seen fit by the Imâm to make peace with enemies, or with a portion of them, and it is, in the interest of Moslems, advantageous to do so, that is not wrong. But if he shall make peace with them for a certain space of time, and should then deem it to be for the good of Moslems to break the covenant, he shall denounce it to them and renew the war." While the truce continued the subjects of the beneficiary power were permitted to enter and pass through Mohammedan territory.

Not only was it allowed to grant a truce to a certain state or people among the Harbee, but a similar privilege might be granted to an individual unbeliever. "If," says Kudûri, "any pilgrim or stranger, who is not a Moslem, come to us imploring protection, it is permissible for him to dwell under our rule, provided the Imâm orders it." But this right of protection is of a very limited and precarious duration. "If," Kudûri continues, "he remains among us for a full year he must be ordered to pay the poll-tax which, if he remain, is to be required of him, for he then becomes a tributary received into the class of clients (*i.e.*, Zimmee), nor shall he be permitted to return to a hostile dominion." Further, "If a

[1] Sale's Koran, p. 132.

[2] Hedaya, vol. ii. bk. ix.

free man or free woman promises security to one who is not a Moslem, the security promised is to be kept, nor is it right for any Moslem to kill such, unless the security be baneful, and then the Imâm shall declare it void."[1]

The Harbee who came to Mohammedan territory and received a passport of protection was called a Musta'min (*i.e.*, seeking or giving safety). Baillie,[2] in his "Digest of Moohummudan Law," explains, in a summary of the different Mohammedan authorities on the subject, the status of the Musta'min: "Foreigners, even when allowed to come into Mussulman territory as Moostamins, or under protection, ought not to be allowed to prolong their residence beyond a year; and it is the duty of the rulers to give them warning to that effect, while the period may be shortened, if that is thought proper, to one or two months. If they neglect the warning, and continue their residence beyond the period prescribed by the notice, they become Zimmees on its mere expiration, and liable to the jizyut or poll-tax; after which they can no more leave the territory and return to their own country. The same liabilities are incurred by the purchase of land subject to the kharaj, or land tax, which, so soon as it is imposed on a Moostamin, has the effect of converting him into a Zimmee. . . . If a woman of the enemy's should enter the Mussulman territory under protection and marry a Zimmee, she would become a Zimmeeah, because she is bound to the place as following her husband. When a foreigner becomes a Zimmee or a Mussulman, his connection with his own dar is cut off in the eye of the Moohummudan law, and he becomes a member of the Dar-ool-Islam."

It is thus clear that a non-Mohammedan might enter the territory of the Moslems and there reside, provided he received a passport or safe-conduct from the ruler or Imâm. But, unless he was willing to become a subject, his residence must not exceed a certain limit of time which, according to different authorities, varies from four months to a year. If he did reside longer, he, *ipso facto* became a subject, liable to the taxes paid by Zimmee and unable in the future to return to his native land. There is

[1] See U.S. Consular Report, 1881.

[2] Baillie, pp. 171 to 173. See also Futawa Alumgeeree, vol. ii. p. 234; Inayah, vol. ii. p. 582; and Hedaya, vol. ii. bk. ix. ch. vi. The chapters on Musta'min, Truces, and Perpetual War are not included in the 1870 edition of Hamilton's Hedaya.

little doubt that the Mohammedan rulers of Egypt or the Levant would consider the residence of the European traders in their cities as "advantageous and in the interests of Moslems;" but it is equally clear that these same traders would have considerable hesitation in so residing if the rules of Mohammedan Law were to be strictly interpreted. The Capitulations, which we have now to consider, were simply grants or permissions of residence to Musta'min; but they recognised the particular circumstances of the case, and went considerably further than the strict law would have allowed. The circumstances were so peculiar, and affected such essential interests of the Mohammedans themselves, that an equitable extension was allowed.

CHAPTER IV

THE TRADE OF EGYPT FROM THE TWELFTH TO THE SIXTEENTH CENTURY

It is difficult to determine the exact date at which the Mohammedan rulers of the Mediterranean States first granted Capitulations or special privileges to the European merchants who carried on trade with them. Although Egypt was conquered by the Arabs in 641, the country does not appear to have settled down to a very peaceful existence for some centuries later. It is probable, however, that a certain amount of trade was carried on between Europe and Egypt during these years, in spite of the disordered state of the country; but the merchants who undertook it, must have done so at considerable risk. It was not, in fact, until the time of the Fatimites, 969 to 1171, that Egypt began to prosper; under these rulers the population increased with wonderful rapidity, and her trade with the East, as well as with Central Africa, developed to a very great extent. Under these circumstances we should be safe in assuming that her trade with Europe underwent a corresponding development at about the same date; we are, however, able to produce evidence to show that this development did actually take place.

Pisa, as we have already seen, was one of the first of the Italian States to develop a trade with the East; and had already in the first years of the twelfth century, received special privileges from the Christian States in the East. An Italian, Michele Amari,[1] has made an interesting collection of documents selected from the Government archives in Florence, these documents include treaties and other diplomatic writings which passed between the Pisan or Florentine Governments and the rulers of the different Mohammedan States situated on the northern coasts of Africa. There are over a hundred of these documents in all, and a very large majority of them

[1] "I Diplomi Arabi de R. Archivio Fiorentino": di Michele Amari, Florence, 1863.

refer to Egypt and Tunis; but other states, such as Morocco, Tripoli, and the Balearic Islands, are also included. The earliest document mentioned by Amari is of the year 1150, and the series continues in an uninterrupted succession down to the sixteenth century; for when Pisa became subject to Florence in 1406, the latter state carried on the same policy which had been so successfully followed by Pisa during two and a half centuries. Among these many documents we are only interested directly with those which concern Egypt; but we may add that the Egyptian documents are, for all practical purposes, exactly similar to those relating to the other states.

Among the Pisan documents which affect Egypt, the earliest of importance is a Capitulation granted to the Government of Pisa by the Khalif of Egypt in February 1154.[1] This Capitulation was renewed by the great Saladin on 25th September 1173.[2] Similar privileges in Egypt and Syria were accorded to Florence on 22nd September 1422,[3] these privileges being again renewed by Kaït Bey in the years 1488 and 1496.[4] These renewals were continued till the very eve of the Ottoman conquest, the last renewal being by El Ghuri on 2nd July 1509;[5] the date of the conquest of Egypt by the Turkish Sultan, Selim I., being 1517. Thus from the time of the Fatimites to the Ottoman conquest of Egypt we have a direct series of Capitulations granted to a European State. Similar Capitulations, renewed from time to time, were enjoyed in the same Mohammedan States by Venice, Genoa, Amalfi, and by the Catalans. France does not appear to have entered into direct relations with Egypt until 1510, when she received certain privileges from El Ghuri;[6] but even at this date the same consul acted for the French, Catalans and

[1] Amari, p. 241.
[2] *Ibid.*, p. 257.
[3] *Ibid.*, p. 338.
[4] *Ibid.*, p. 184.
[5] *Ibid.*, p. 39
[6] By certain authors it is claimed that the French were granted the right to maintain a Consul at Alexandria after the defeat of Louis IX. at Mansourah; but the authorities quoted by Rey in opposition to this statement are sufficiently strong to disprove it. Rey speaks of Philippe de Parès (about 1498 to 1506) as the first French Consul in Egypt; and he was also Consul to the Catalans and Neapolitans. It was Jean-Piene Benoist, the successor of Philippe, who was also Consul to the French and Catalans, who received the Capitulation of 1528 from Suleyman II. for the Catalans and French. Rey quotes a letter from El Ghuri to Louis XII., granting certain privileges to the French in 1510, and these, Rey asserts, were the first granted to the French.—Rey, pp. 104 to 114.

Neapolitans. The French, however, appear to have established a kind of commercial supremacy in Egypt by the year 1580.[1]

The trade of England with the Mediterranean States does not appear to have aequired any remarkable importance till the sixteenth century; and even then it was not till the close of that century that it assumed a permanent character. The granting of a charter to the Levant Company in the year 1581[2] may be taken as the event marking the commencement of this permanency. The earliest privilege, of which we can find a record, granted to an English merchant, is "the safeconduct and privilege granted by the Sultan Solyman, the great Turke, to Master Anthony Jenkinson at Aleppo in Syria, in the year 1553."[3] This charter grants freedom to "enter harbours," with exemption from all "custome or toll whatsoever, save only our ordinary duties," and liberty to "traffike, bargaine, sell and buy, lade and unlade, in like sort and with the like liberties and privileges, as the Frenchmen and Venetians use, and enjoy, and more if it bee possible, without the hinderance or impeachement of any man. And furthermore wee charge and command all Viceroyes, and Consuls of the Freneh Nation, and of the Venetians, and all other Consuls resident in our Countreys, in what part or province soever they be, not to constraine, or cause to constraine by them, or the sayd Ministers and Officers whatsoever they be, the sayd Anthony Jenkinson, or his factor, or his servants, or deputies, or his merchandise, to pay any kind of consullage, or other right whatsoever, or to intermeddle or hinder his affaires, and not to molest or trouble him any maner of way, because our will and pleasure is, that he shall not pay in all our countreys any other than our ordinarie custome."

We find in Hakluyt's "Voyages" several references to the trade

[1] In "Notes concerning the trade in Alexandria, 1584" (Hakluyt, vol. v. p. 272), we read: "The Venetians have a Consul themselves. But all other nations goe to the French nation's Consul, who will give you a chamber for your selves apart, if you will so have it." See also "A description of the yeerley voyage or pilgrimage of the Mahumitans, Turkes and Moores unto Mecca in Arabia, 1580."—Hakluyt, vol. v. pp. 329, &c.

[2] "The Letters patents, or privileges graunted by her Majestie to Sir Edward Osborne, Master Richard Staper, and certaine other Marchants of London for their trade into the dominions of the great Turke, in the yeere 1581."—Hakluyt, vol. v. pp. 192 to 202.

[3] "The safeconduct or privilege given by Sultan Solyman the great Turke, to Master Anthony Jenkinson at Aleppo in Syria, in the yeere 1553."—Hakluyt, vol. v. pp. 109, 110.

of English ships in the Levant at the commencement of the sixteenth century. "In the yeeres of our Lord, 1511, 1512, &c., till the yeere 1534 divers tall ships of London . . . had an ordinairie and usuall trade to Sicilia, Candie, Chio, and somewhiles to Cyprus, as also to Tripolis and Barutti in Syria. . . . The commodities which they returned backe were, Silks, Chamlets, Rubarbe, Malmesies, Muskadels and other wines, sweete oyles, coteen wooll, Turkie carpets, Galles, Pepper, Cinamom, and some other spices, &c. Besides the naturall inhabitants of the foresayd places, they had even in those dayes, traffique with Jewes, Turkes, and other foreiners. Neither did our merchants onely employ their owne English shipping before mentioned, but sundry strangers also: as namely, Candiots, Raguseans, Sicilians, Genoezes, Venetian galliasses, Spanish and Portugall ships."[1] Further on we read: "This trade with the Levant was very usuall and much frequented from the yeere of our Lord 1511, till the yeere 1534, and afterward also, though not so commonly, untill the yeere 1550. . . . Since which time the aforesaid trade (notwithstanding the Grand Signior's ample privilege granted to M. Anthony Jenkenson, 1553 . . .) was utterly discontinued, and in manner quite forgotten, as if it had never bene, for the space of twenty yeeres and more. Howbeit the discreete and worthy citizens Sir Edward Osborne and M. Richard Staper seriously considering what benefite might grow to the common wealth by renuing of her Majesties customes, the furthering of navigation, the venting of diverse generall commodities of the Realme, and the inriching of the citie of London, determined to use some effectual meanes for the re-establishing and augmenting thereof."[2] The result was that they sent William Hareborne as their agent to Constantinople, where he arrived in October 1578, "Where he behaved himselfe so wisely and discreetly, that within few months after he obtained not only the great Turkes large and ample privilege for himselfe, and the two worshipfull persons aforesaid, but also procured his honourable and friendly letters unto her Majestie. . . ."[3]

These negotiations so auspiciously opened by Hareborne resulted in the first Capitulation granted by the Sultan of Turkey to England. William Hareborne was deservedly appointed British Ambassador

[1] "The antiquitie of the trade with English ships into the Levant."—Hakluyt, vol. v. pp. 62, 63.

[2] Hakluyt, vol. v. pp. 167 to 169.

[3] *Ibid.*

"in the partes of Turkie" in 1582;[1] and we find "A letter of the English Ambassadour to M. Harvie Millers, appointing him Consull for the English nation in Alexandria, Cairo, and other places in Egypt, 1583;"[2] and "The commission given by M. William Hareborne, the English Ambassadour, to Richard Forster, authorising him Consul of the English nation in the parts of Alepo, Damasco, Aman, Tripolis, Jerusalem, &c., 1583."[3] Thus by the end of the sixteenth century we find the British trade fairly well established all round the Mediterranean, and the way opened for the institution of the Capitulation system. We shall deal fully, at a later period, with the Capitulations granted to England by Turkey, but we may mention here that a complete series of similar Capitulations is to be found in Hertslet.[4] Thus between April 1682 and August 1816 we find no fewer than fourteen documents dealing with commercial privileges in Algiers; while there are eight with Morocco between January 1721 and April 1791; nine with Tripoli between October 1662 and April 1816; and six with Tunis between October 1662 and April 1816. Fuller reference will be made to some of these later.

We shall in our next chapter give a full account of two of the Pisan Capitulations with Egypt, namely, that granted by Saladin in 1173, and that of Kaït Bey in 1488. But before doing so it will help to a better understanding of these documents if we try to obtain a clearer conception of life in Egypt at the time. There is an interesting account given of Egypt in the time of Kaït Bey in the writings of a German pilgrim, Bernard de Breydenbach,[5] Canon of Mentz, who visited Cairo and Alexandria in the autumn of 1483, just five years before the Florentine Capitulation. Some of Breydenbach's personal experiences show very clearly the necessity for a number of the special regulations provided for in this Capitulation. The description[6] given by Breydenbach of Cairo seems a little exaggerated; but, as he naïvely remarks, he did not count himself, but only

[1] "The Queenes Commission under her great seale, to her servant master William Hareborne, to be her majesties Ambassadour or Agent, in the partes of Turkie, 1582."—Hakluyt, vol. v. pp. 221 to 224.

[2] Hakluyt, vol. v. p. 259.

[3] *Ibid.*, p. 260.

[4] Hertslet's "Commercial Treaties," vol. ii.

[5] "Sanctarum Peregrinationum," Bernardi di Breydenbach, folio 88.

[6] "Dicitur etiam quod numerus parrochiarum sive ut aiunt contratarum in ipse urbe ascendat ad viginti quatuor millia, Verum ex illis non nisi quattuordecim millia hujusmodi contratarum portis et seris singulis noctibus clauduntur. . . . Nam longe plures in ea sunt homines qui propriis carentes

repeats what he was told. There were, according to his account, 24,000 quarters or parishes, of which 14,000 were closed at night with doors and locks. It would take four hours to cross the town, and ten to go round it. He speaks also of 15,000 Jews being in Cairo, and states that the Venetians had a consul in that city. Since he was a Christian he was not allowed to enter Cairo without a dragoman, as otherwise it would not be safe to do so; even under this protection he and his friends were frequently treated rather

domibus dormiunt sub divo quam sint venetiis habitatores. Audita refero neque enim ipse numerari. Nam et Judeorum supra XV. millia ibi dicebantur habitare, omnes artificia exercentes vel mercationibus vacantes. . . .

"Habent namque veneti semper unum ex suis in Chayro qui et consul vocatur, qui pro defensione mercatorum in Alexandria et mercantium apud Soldanum laborat. . . .

"Nullatenus enim absque ejus tuitione possent Christiani vel judei civitatem illam potentissimam ingredi cum salute et pace. . . .

"Quo facto precedente trutzelmanno per medium Chayri processimus in asinis cum sarcinulis nostris contra Nylum, qua in via irrisiones iterum et contumelias atque enim percussiones sustinuimus non paucas. . . .

"Ducti ita in curiam regis Sicilie que est fonticus cathaloniorum ab ipso curie inhabitatore qui consul cathaloniorum cognominatur humaniter et benigne fuimus suscepti, assignatisque cameris res nostras intulimus in eas. Est autem fonticus domus grandis in qua et negociatores et merces eorum conservantur ubi et forum rerum venalium habetur. Quamvis enim et veneti in Alexandria duos habent fonticos et Januenses unum, peregrini tamen abolim in fontico Cathaloniorum se recipere consueverunt. Nam et ab ejusdem fontici consule proteguntur trutzelmanno Alexandrino sibi auxilium ferente. . . .

"Singulis autem noctibus omnes fontici per sarracenos a foris clauduntur ne quis ingredi possit vel egredi, sed et his diebus ipsi in muschkeis congregantur et quando precipuas habent solemnitates nec sunt in Alexandria domus ulle dictis fonticis pulchriores et ornatiores.

"His perspectis ad mare accessimus ubi magnus erat hominum conventus circa mercatores qui species aromaticas saccis imponebant. Siquidem dum in camelis species ad mare de fonticis educuntur navibus inferende, sarracenorum officiales stantes in litore saccos evacuant perscrutantes ne forte aliquid pretiosum inter species absconditum efferatur. Cumque ita circa species laboratur pauperes et inopes multi adcurrunt ea que manus fugerint imponentium raptim colligentes et que furtim auferunt mox in via sedentes vendunt. . . .

". . . quod per singulas custodias sarraceni de omnibus rebus et personis grave exigunt pedagium sive theloneum decimum denarium de centesimo juxta suum compotum recipientes. Sunt autem tres custodie inter mare et civitatem: quarum prima est circa portam inferiorem que ducit in urbem; secunda vero longe ab ea in exteriori porta que ducit ad mare inter muros civitatis; tertia autem est in litore maris. In his omnibus officiales Soldani omnes tam intrantes quam exeuntes diligenter examinant et perscrutantur et potissimum mercatores et merces eorum. Ego vero auxilio trutzelmanni nostri Alexandrini cui non paucos propinavi ducatos, obtinui quod res mee per dictas custodias sine perscrutatione fuerunt educte. . . .

"Illis etiam diebus videntes Alexandrini qui per mare vagabantur

roughly, and were charged excessively high prices, and sometimes compelled to pay twice over. In Alexandria they went to the Funduk of the King of Sicily, which was, at that time, shared with the Catalans; and were there the guests of the Consul of the Catalans. The Venetians appear to have had two Funduks at that time in Alexandria, and the Genoese one; but it seems to have been the practice of pilgrims to go to the Funduk of the Catalans, and to place themselves under the protection of the Catalan Consul. The greatest difficulty seems to have been experienced by foreigners in dealing with the custom-house officials, whose charges on goods, even when leaving the country, were very heavy: in fact, in leaving the city a stranger had to pass through no less than three customs houses. When we remember that the most important part of the Egyptian trade was passing from East to West we realise the disastrous effect this system must have had on the profits of the European merchants, and we are therefore not surprised to find in the Capitulations a clause which stipulates "That the Florentine merchant, after he shall have sold or bought merchandise in Alexandria or elsewhere and paid the established duties and charges, shall be able to return freely to his own country, or whithersoever he will, without being held to pay neither one farthing more or less." Breydenbach, by the assistance of his dragoman, was fortu-

navem alienam portui applicare et eam expugnantes ceperunt captamque introduxerunt in portum victores spolia inter se distribuentes more piratarum. Nisi enim naves Alexandriam applicare volentes potenter sint armate ab ipsis Alexandrinis antequam in portum venerint spoliantur, quem cum intraverint secure sunt quandiu steterint in eo. Grandis etenim est sarracenis cura pro custodia portus illius, unde et duos qui intra civitatem habentur montes, qui hominum manibus facti sunt assidue conscendunt ut maria contemplentur longe lateque inde prospicientes si qua videant vela que mox ubi viderint Amiraldo denuntiant qui cursoriam emittens naviculam de conditione inquirit adventantium. Et quidquid forte creditu sit difficile tamen omnino ita sesse habet quod narrabo. Ipse Admiraldus semper apud se quandam disciplinatas habet columbas sic edoctas ut quocumque perrexerint inde in ipsius amiraldi curiam revertantur. Earum duas aut tres nauclari emissi in occursum navium secum recipientes educunt per mare usque ad locum in quo adventantes possunt explorare, ubi mox conscriptam cedulam continentem que scitu necessaria sunt ad collum suspendunt unius columbe, eamque sinunt avolare, que continuo volatu ad mensam usque amiraldi cedulam afferens quales sint venientes indicat. . . . Porro si naucleri ab ipso amiraldo missi navium conditiones investigare nequiverint, hoc ipsum per columbas sibi renuntiant qui statim armatas mittit fustes tradens in mandatis ut advenientes invadant, depredentur et spolient, quod et faciunt nisi eos invenerint fortiores ut dictum est jam supra."—Breydenbach, folio 88.

nately able to avoid these customs officials, especially as the goods were frequently plundered during the examination. Another practice, mentioned by Breydenbach, explains the necessity of the clause found in all Capitulations, by which permission is granted to the foreigner to come within Mohammedan territory and enter her ports in safety and without interference. A general system seems to have been organised in Alexandria, which provided that sentries should be posted all along the coast, whose duty it was to send immediate notice to the admiral of the port as soon as they sighted a sail on the horizon; the admiral, on receipt of such information, immediately despatched a fast sailing vessel to intercept the new-comer and make inquiries as to her nationality and business. Each of these fast cruisers carried a number of carrier pigeons on board, and one of these was despatched to the admiral with information concerning the foreign vessel; if the information was not satisfactory, armed ships were despatched from the port, with results disastrous to the too adventurous merchantman. In fact, during Breydenbach's short stay in Alexandria, he witnessed the pillage of at least one such merchant vessel.

We shall finish this chapter by a more peaceful account of Alexandria in 1580, a century later than Breydenbach. "It is certaine that this haven of Alexandria is one of the chiefest havens in the world: for hither come to traffique people of every Nation, and all sorts of vessels which goe round about the citie. It is more inhabited by strangers, marchants, and Christians, then by men of the countrey which are but a few in number. Within the citie are five Fontechi, that is to say, one of the Frenchmen, where the consul is resident, and this is the fairest and most commodious of all the rest. Of the other foure, two belong to the Venetians, one to the Ruguseans, and the fourth to the Genoueses. And all strangers which come to traffique there, except the Venetians, are under the French Consull. It is also to be understood that all the Christians dwell within their Fontechi, and every evening at the going downe of the sunne, they which are appointed for that office goe about and shut all the gates of the saide Fontechi outward, and the Christians shut the same within: and so likewise they doe on the Friday (which is the Moores and the Turkes Sabboth) till their devotions be expired, and by this meanes all parties are secure and voide of feare: for in so doing the Christians may sleepe quietly and not feare robbing, and

the Moores neede not doubt whiles they sleepe or pray, that the Christians should make any tumult, as in times past has happened."[1] A comparison between these two accounts shows what a vast difference even a century had made in the intercourse between the Christian merchants and the Moslem inhabitants of Egypt, an intercourse which had only been rendered possible by the system of Capitulations. If the next centuries witnessed no similar development, the cause may be found to some extent in the partial cessation of trade by the Egyptian route to the East, but probably more in the reactionary influence of the Turkish governors, who, as long as they received the appointed tribute, cared little for the welfare of Egypt or the development of its trade with Europe.

[1] "A description of the yeerly voyage or pilgrimage of the Mahumitans, Turkes and Moores unto Mecca in Arabia." 1580.—Hakluyt, vol. v. pp. 329 to 332.

CHAPTER V

THE RIGHTS AND PRIVILEGES GRANTED BY THE EARLY EGYPTIAN CAPITULATIONS

The Arab documents contained in Amari's collection are written sometimes either in Latin, Italian or Arabic, and sometimes in two or more of these languages. One of these documents is in Italian, but written in Arabic characters. In referring to the difficulty experienced in translating those of them which had been written in Latin, Amari says: "Coptic priests and Italian merchants had laboured upon them together; the former to transpose the Arabic into I know not what idiom, and the latter to translate it into Latin which was both ungrammatical and mixed with Italianisms, and with some Arabisms!" The style of the first of the two Capitulations,[1] which we have chosen for special consideration, namely, that granted by Saladin in 1173, is very rambling and passes from one subject to another without, often, any very apparent sequence. The style of Kaït Bey's Capitulation is a very great advance upon its predecessor. It is arranged into thirty articles, thus initiating the practice which led to the name Capitulation. Each article may be divided into two parts: the first is in the form of a complaint, asking for redress of certain grievances, or of a demand for some special privilege; the second part is in the nature of a promise of redress, and takes the form of the clause, "We ordain the execution of this caput,"[2] or "whereof we ordain the execution."

The immunities, privileges or acts of redress demanded, were most frequently in reference to some special grievance, or to some special misconduct of Government officials; and this is so, especially, in reference to the acts of the customs officials. Abuses similar to those described by Breydenbach, for instance, when the merchants

[1] An English translation of these two Capitulations is to be found in an Appendix to the U.S.A. Consular Report, 1881, already referred to.

[2] "Ordiniano l'excuzione di questo capitolo."

arrived with their sacks of goods, which the officials of the customs insisted upon emptying on the road, in order to make sure that they did not conceal something of special value, the natural result being that the crowds of beggars, who haunted the place, stole large quantities of the goods and sold them on the streets. But there were, besides these clauses redressing special grievances, a number of clauses granting privileges which occur in all Capitulations, and thus form a common rule or practice. Among these latter the more important are: The right to enter and reside in the Egyptian territory, the right, in other words, of the Musta'min, which, of course, included the right of safety to person and property; the right of freedom of religion; the right to have a special quarter or Funduk; immunity from the local jurisdiction, and the privilege of being judged by their consuls, according to their own law; the right of succession according to their own law; and privileges in respect to customs dues.

In regard to these, the "Funduk" appears to have been a walled enclosure, in which there were sleeping-rooms for the merchants or travellers, stalls for their horses, and warehouses for their goods. Frequently the consul had his residence here, and the courtyard was used as a market-place. The gates were closed at night and on Mohammedan festivals; and, in fact, the stranger lived within the "Funduk" as if he were within his own territory. They appear, frequently, to have been the best built and most striking buildings in the city. From our point of view, they resembled the quarters granted by the Christian rulers of the Levantine States to the Italian merchants; and it is probable that they did in time develop into quarters. Heyd describes the "Funduk" in the following terms:— "En Orient, on employait le mot arabe 'fondouk' pour désigner des bâtiments construits aux frais de l'Etat et mis à la disposition des voyageurs; les marchands pouvaient y loger, y emmagasiner ou y mettre en vente leurs marchandises, enfin y traiter leurs affaires. La signification de ce mot est identique à celle du mot 'khan;' c'est de là que vient le mot 'fondaco.'"[1] The privilege in regard to succession was merely in accordance with the ordinary rules of Mohammedan Law in reference to Musta'min. "When a Moostamin dies within the Mussulman territory, leaving property in it, and heirs

[1] Heyd, t. ii. p. 430, note.

in his own country, the property is reserved for them until they establish their right to it."[1] The Mohammedan rule in regard to the right of jurisdiction over Musta'min is, "Foreigners residing as Moostamin in the Dar-ool-Islam or any Mussulman country are presumed from accepting protection to submit themselves to the Jurisdiction of the Moohummudan judge in all matters accruing subsequently to their becoming Moostamins, though not for any previous thereto."[2] The privilege of being exempt from the jurisdiction of the local courts was, therefore, a special privilege not usually accorded to Musta'min. The other privileges have already been discussed under the rights of Musta'min.

Saladin's Capitulation commences with an order addressed to all his subjects, ordaining them to obey his commands, as contained in the following document. A description then follows of how Aldebrand came to him as the representative of the Pisans; "and I heard from his mouth and understood from his letters that they desired to have our love, to obey our orders, and to come into our state as they were wont to do heretofore." The first clause of these privileges refers to a duty on wood, iron and pitch which was reduced from 19 per cent. to 10 per cent., all other goods to pay the duty already in force. Then follow instructions to the officials as to the manner in which this duty was to be collected from the Pisans: "They must be treated with love, and they must be made to pay the duty in a kind way and amicably, and they must pay nothing to any servant of the customs house, be he great or small." The customs-house officers had been in the habit of demanding higher customs dues than they were entitled to. This practice was to cease, and likewise the practice of the port officials of taking away the sails or rudders of a merchant vessel, as a means of extorting money from the owner.

"They begged that we would permit them to repair the Funduk for their use." "So also they prayed us for a bath, and we granted it to them, and the custom house was to pay all for them, and on the day they were to go to it to wash themselves no stranger was to be allowed to go into it, and no one else was to be allowed therein." "As to the church which belonged to them, and which we gave them, they shall have it as they had it before; and when they go to the

[1] Baillie, p. 175.

[2] Baillie, p. 174.

church they shall not suffer any molestation whatever, neither on the way nor within the church; and inside the church no noise may be made which might interfere with their hearing the word of God according to the precepts of their law. But they may observe their law even as the precepts of God and their laws ordain."

The official libripens appears to have dealt unfairly by them, when he weighed their goods for sale. In consequence "they begged us that they might be allowed to keep, in their Funduk, a steel balance for their use, and be allowed to sell and buy with it, which we granted them, since we knew that merchants can neither buy nor sell without justice."

The immunity from local jurisdiction is thus stated: "I have also given orders to my Bajuli, both in the past and in the future, that they cannot occupy themselves with any litigation or matter between the merchants without their consent, nor institute actions against the merchants so as to delay them. . . . " The privilege in regard to successions is in the following terms:—"They prayed that whoever of their nation should die in our realm and leave money or wares, that these should be taken by his companions in order to deliver them to their relatives in his country. And those who take these goods must write letters and give security that they will deliver everything to the relatives. This we granted them, *for the law ordains it*,[1] and justice requires that it be thus done." These are the most important clauses; there are, however, a number of others dealing with complaints of ill-treatment of one sort or another, but generally at the hands of officials. There is also a general clause in reference to the piratical acts committed by the Mohammedans. "They begged us that they wished to stop our people from doing them harm by sea, and from opposing them during the voyage, and from robbing them."

When we remember that the date of this Capitulation was fifteen years before the capture of Jerusalem by Saladin, we are not surprised to find that the Pisans were made to promise, on their part, not "to give succour to the enemies of our kingdom nor cause harm to any of our cities or castles whether in the East or in the West;" and "they bound themselves not to carry, neither by sea nor by land, any man who might wish to do harm to our realm, nor to come with

[1] See *ante*. Baillie, p. 175.

any man who might wish to make war upon or besiege our lands, nor to damage any Saracen merchant, nor betray him, nor deceive him. And that if any Saracen should accompany them, they should keep and guard him like their own selves and not hand him over to the enemy."

The Capitulation granted by Kaït Bey to Luigi della Stufa commences much in the same manner as the last; it states how Luigi "has presented himself at our illustrious gate, and after having had the good fortune to stand in our illustrious presence, and set forth in the name of his master the things touching the Florentine nation and its merchants, together with the capitulations of commerce already established by the Sultans, our predecessors, and has requested of our benificence the renewal and confirmation of the said capitulations through and by our illustrious commandment from us." Then follows the order to "all our ministers" to obey his commands, and "put into execution the clauses of this capitulation."

The first article of the Capitulation grants the Florentines the usual privilege of entering the country in safety, and commands that no one shall interfere with, or cause harm to, their persons, ships, goods or servants. This free entry, however, being subject to the payment of the ordinary customs dues. Article 26 reiterates this command that no harm shall be done to the Florentine ships. This repetition is perhaps not surprising, when we recall what Breydenbach wrote about the treatment accorded to foreign ships in the port of Alexandria at this date. Breydenbach's account of the behaviour of the customs officials also helps to account for the fact that the large majority of the articles of this Capitulation deal with matters connected with the customs. For instance, if, in order to cause inconvenience to the merchants, the customs officials refuse to examine their goods, the merchants shall after three days be at liberty to sell the said goods, on giving the customs a note of their value. Compensation is to be allowed to operate in reference to debts owed to and by the customs. Article 3 deals with a typical complaint, and recounts how the customs officials "opened the bales with violence and confusion, and in such a way that some of them were able to appropriate part of the said merchandise by falsely asserting that they had bought the same."

The privilege in regard to successions is dealt with in Article 9. "That should a Florentine *perish* in our Moslem dominion, having

previously made a will, none of the Moslems or others can hinder the carrying out of his wishes, nor claim the effects or money of the perished Florentine, nor cause the same to be burdened by any costs by our governors or ministers. On the other hand should a Florentine perish without a will, let his effects remain under the care of his consul until the arrival of the legitimate heirs." This is much more fully developed, and shows a considerable advance on the corresponding clause of Saladin's Capitulation. The use of the word "perish," however, is interesting, as marking a distinction in the future state of the unbeliever after death. For the believer there is a Paradise, but for the unbeliever death means the end of existence; he perishes.

The clauses dealing with immunity from jurisdiction are likewise more fully developed. Disputes arising between a Florentine and a Mohammedan are provided for under Article 11; while Article 14 provides for disputes between Florentines. "No Mohammedan can accuse or bring an action against the Florentine merchants except in the court of the president of the custom house; and in case the action shall not be terminated by the said president according to the rules of justice, it is our will that the revision and decision thereof shall be referred to our illustrious tribunal." "Should any disagreement or dispute arise between the said Florentines, no governor or Mohammedan judge shall interfere in their affairs, but jurisdiction therein shall belong to the Consul of the Florentines."

Two articles refer to contracts entered into between Florentines and Mohammedans. Article 7 says: "That neither the Florentines nor the Moslems can fail to fulfil the contract made between them and communicated to the court of the weigher." And Article 25: "The accounts between a Florentine and a Moslem, which have been entered into and registered in writing, shall be valid, and neither of the two parties shall be able to withdraw from accounts so made, unless by judicial means." Article 18 provides that a Florentine shall not be held responsible for the debts due by another Florentine to a Mohammedan.

The only other articles of interest are—Article 27, which provides for a Fundak: "The Florentine consuls and merchants shall have a fixed site for their dwelling place in Alexandria, and special store houses, just as other European natives have;" and Article 15, which dispenses with the regulations enforced against Musta'min in the

matter of dress: "Should any Florentine make a voyage from one part of our Moslem dominions to another, he may, for the greater security of his person and his property, dress himself, while travelling on the way, like a Mohammedan and so escape unpleasant encounters and vexations; and no one shall interfere with him in regard to his eating and drinking, nor burden him with any costs or charges." Within their own Funduk the foreign merchants appear to have enjoyed perfect freedom in regard to the question of food and drink; for instance, Breydenbach speaks of having seen a pig in the Venetian Funduk. There is no article expressly relating to the right of religion; but this is not surprising, as it was in accordance with ordinary law to allow the Musta'min to worship according to his own religion. The rule was probably so well established, and so universally recognised, that it did not require to be particularly specified. Breydenbach speaks of attending Mass in the chapel of the Catalan Funduk.

These earlier Capitulations, apart from the clauses dealing with special complaints or with the regulation of the customs, were simply the application to European merchants of the Mohammedan Common Law with reference to the Musta'min. The Musta'min was entitled to a safe-conduct protecting his life and property, and allowing him to freely enter the Mohammedan territories; he was entitled to worship according to his own religion; and, on his death, his property passed to his heirs according to the law of his own country. The common law was simply modified to meet the special circumstances, which the presence of a community of non-Mohammedan merchants involved. The most important of these modifications referred to jurisdiction, nor is this surprising when we consider the narrowness of Mohammedan Law, which was a law as sacred to believers as ever the Jus Civile was for the Roman patrician. And, further, there was no commercial law to be found in the Mohammedan system. The Mohammedan rulers realised the importance, to the welfare of their country, which the presence of these foreign merchants implied; they also realised that "merchants cannot buy or sell without justice."

Perhaps the most remarkable point, which distinguished these Capitulations from the Mohammedan Common Law, was to be found in the greater sense of security which they guaranteed to the foreign merchant. While the protection accorded to the ordinary Musta'min

was essentially temporary, and frequently uncertain, that accorded to the European merchant had as its characteristic the principle of permanency. It might be true that there could be no "Peace" between the Dar-el-Islam and the Dar-el-Harb, and that the most that could be conceded was a "Truce"; yet this truce was renewed with such regularity that it must eventually have given that feeling of permanency which alone can form the basis of successful commercial relations. The real interests of the country were intimately bound up in the continuance of this commerce, and this fact must have had considerable influence on the Mohammedan rulers. It is undoubtedly true that the people and the officials did not always realise this fact, and did prey upon the unbeliever, cheat him, and plunder him in every way they could; but it only required a complaint made in the right quarter, and a command was issued to them to treat the foreigner with justice and civility. In comparing these privileges with those granted by the Christian rulers of the East, we find that they are, in principle, the same. There is the same permission to enter the state, the same commercial privileges in reference to the customs, the same religious freedom, the same immunity from local justice, and the same grant of a Quarter or Funduk. It is only in regard to the special complaints, made in reference to the ill-treatment at the hand of the officials, that we find any difference. But have we any reason for assuming that there might not sometimes be similar grounds for complaint against the Christian officials, and the more unruly section of the Christian populace?

It is not without interest to recall that many Christian sovereigns in Europe found it to their advantage to grant special privileges to foreign merchants within their territories. In England we have several examples, both of privileges granted to foreign merchants in England, and of privileges accorded to English merchants in foreign European States; privileges which correspond in date to that of the Capitulations with which we have just been dealing. Thus we find "A generall safe conduct granted to all forreine Marchants by King John, 1199."[1] "A Charter granted for the behalfe of the Marchants of Colen, in the 20. yeere of Henry the thirde, 1236;"[2] "The Charter of Lubeck granted for seven yeeres

[1] Hakluyt, vol. i. p. 319.

[2] Hakluyt, vol. i. pp. 323, 324.

in the time of Henry the third, 1257;"[1] and, "The great Charter granted unto forriene marchants by King Edward the first, in the 31 yeere of his reigne commonly called Carta Mercatoria, Anno Domini, 1303."[2]

The oldest of these documents is "A testimony of certaine Privileges obteined for the English and Danish Merchants by Canutus the King of England in his journey to Rome."[3] In this there is a clause to the effect "that my subjects, as well as Marchants, as others who travailed for devotions sake, should without all hinderance and restraint of the aforesaid stops and customers, goe unto Rome in peace, and returne from thence in safetie." "The first Privileges granted by the Emperor of Russia to the English Marchants in the yeere 1555"[4] is also a document very much after the style of the Capitulations, both in its outward form and in the nature of the privileges granted. "1. First, we for us, our heirs and successors, do by these presents give and grant free licence, . . . unto the said Governour, Consuls, Assistants, and communalty . . ." that they "may at all times hereafter for ever more surely, freely and safely with their shippes, merchandizes, goods and things whatsoever saile, come and enter in all and singular our lands . . . and there tary, abide and sojourne, and buy, sell, barter and change all kind of merchandizes . . . freely and quietly without any restraint, impeachment, price, reaction, prest, straight custome, toll, imposition, or subsidie to be demanded . . . so that they shall not need any other safe conduct or licence generall, ne speciall of us. . . .

"4. Item, we give and grant unto the said Marchants and their successors, that such person as is, or shall be commended unto us . . . to be their chiefe Factor within this our Empire and dominions, may and shal have ful power and authoritee to govern and rule all Englishmen that have had, or shall have accesse, or repaire in or to this said Empire and jurisdiction, or any part thereof, and shall and may minister unto them, and every of them good justice in all their causes, plaints, quarrels, and disorders betweene them moved, or to be moved, and assemble, deliberate, consult, conclude, define, determine and make such actes, and ordinances, as he so

[1] Hakluyt, vol. i. pp. 324, 325.
[2] *Ibid.*, pp. 327, &c.
[3] *Ibid.*, pp. 313, 314.
[4] Hakluyt, vol. ii. pp. 297 to 303. These privileges were renewed in 1567. —Hakluyt, vol. iii. p. 97.

commended with his assistants shall thinke good and meete for the good order, government and rule of the Marchants, and all other Englishmen repairing to this our saide Empire and dominions, or any part thereof, and to set and levie upon all, and every Englishmen, offender or offenders, of such their acts and ordinances made, and to be made, penalties and mulcts by fine or imprisonment.

"6. Item, we promise unto the saide Marchants, and their successors upon their request to exhibite and doe unto them good, exact and favourable justice, with expedition in all their causes. . . .

"7. Item, wee graunt and promise to the saide Marchants, and to their successours, that if the same Marchants or any of them shall bee wounded, or (which God forbid) slaine in any part or place of our Empire or dominions, then good information thereof given, Wee and our Justices and other officers shall execute due correction and punishment without delay, according to the exigence of the case, so that it shall be an example to all other not to commit the like. . . ." What is there, hidden under all this weight of words, that is not given, with commendable brevity, in the Mohammedan Capitulations? The only remarkable difference is that the Christian prince stipulates for himself and his heirs and successors: but even this difference was not of great practical service, since the merchants require a renewal twelve years later.

De Martens, in discussing the origin of consuls, points out how the Europeans found the system, practised by them in the East, of such advantage to them in developing commercial intercourse, that they applied it in their dealings with other European States. "An institution so much in conformity with the spirit of commerce and so advantageous to the merchants who carried on business with distant lands, was soon initiated by the other nations, such as the Pisans, Genoese and the Venetians, who began in the thirteenth century to grant the right of sending consuls. The practice, however, did not become general till the sixteenth century, and especially from the reign of Louis XIV. Gradually all the commercial nations appointed consuls in each other's states, armed with greater or less powers; the numbers of these have since increased enormously. . . . The Aldermen at one time appointed by the Hanseatic cities in many places, and of whom some traces still remain, performed the duties of consuls. And, finally, in those

towns and commercial centres, where the English merchants were allowed to form themselves into guilds, the chief of the guild of merchants, 'court-master,' exercised a form of consular jurisdiction in reference to those members of his nation who were of this corporation."[1] Probably the first British Consul appointed to a European State was Laurent Strozzi, appointed in 1486, by Richard III., as British Consul to Italy, and specially for the town of Pisa. Consio de Baltazari was similarly appointed as "master governor protector and consul of English merchants doing business in Candia."[2] Nor is it surprising to find this system so widely adopted in Europe during these centuries. It was not only in the East, and not only in the non-Christian States, that the law regarded the foreigner with suspicion, and did little to protect his rights.

De Martens cites a treaty, which is not without interest to us, as it is an example of similar rights, as those of the Capitulations, being granted by a Christian to a Mohammedan prince. It is a treaty of 1230, between Fredrick II., King of Sicily, and Abbuisac, a Saracen prince of Africa, in virtue of which a Mohammedan Consul was to be appointed to dispense justice to the Mohammedans carrying on business in Corsica. This appointment, it was agreed, was only to be given to a Mohammedan, as no one else could be considered an authority on that law.[3]

[1] De Martens, "Guide Diplomatique," vol. i. pp. 203, 204.

[2] De Martens, vol. i. p. 204, note. See also Tarring, "British Consular Jurisdiction in the East," p. 3: "To which appointment his Majesty was moved 'by observing from the practice of other nations the advantage of having a magistrate appointed for settling disputes among them.'"

[3] De Martens, vol. i. p. 229, note 1: "Ut non habeant Christiani in insula Corsica jurisdictionem super allum Mahometarum, præter præfectum mahometarum, missum à rege Siciliæ, nomine suo, ad regendos tautummodo populos unitatis, et sit occupatus in negotiis populi unitatis quem Deus honorificet."

CHAPTER VI

THE OTTOMAN CAPITULATIONS AND THE FRENCH CLAIM OF PROTECTION

THE next phase in the history of the Capitulations commences with the capture of Constantinople by Mohammed II. in 1453. The Genoese on 29th May 1453, the very day of Mohammed's entry into Constantinople, received a recognition and continuation of their privileges; while on 18th April of the following year Venice concluded an advantageous treaty with the Ottoman conqueror. Both these states had already entered into treaty relations with the Ottoman rulers for some considerable time before the fall of Constantinople. Thus Noradounghian[1] refers to a Treaty of Commerce between the Sultan, Murad I., and the Republic of Genoa, of the date 8th June 1387. In the same work we find mention of Venetian Treaties with the Ottoman Sultans of the following dates, 1408, 1413, 1416 and 1430. The two great commercial cities of Italy, who had now for centuries divided the commerce of Constantinople, had not hesitated to make terms with the Mohammedan power which threatened Europe, and had already been in receipt of commercial privileges before the fall of the Christian Empire. It was not surprising, therefore, that they were the first to have those commercial rights in Constantinople which had been granted them by Christian rulers, confirmed by the new Mohammedan power.

Florence and Pisa were the next in order to receive a Capitulation; in 1460 they were accorded certain commercial privileges and the right to appoint a baily at Constantinople. In 1481 a convention was concluded with Catalonia "for the establishment of commercial relations." Poland entered into treaty relations with the Ottoman Empire in 1489 and Russia in 1515. France had received certain privileges in Egypt from El Ghuri; these were recognised and confirmed by the Sultan, Selim I., in 1517, and

[1] Noradounghian, "Collections of Treaties and other International Documents with Turkey," 4 vols.

again by Suleyman I. in 1528. But although there seems to have been a treaty of friendship entered into between France and the Ottoman Empire in 1532, France's first Ottoman Capitulation does not seem to have been granted till February 1535. It has been customary with the majority of French authors to quote this French capitulation of 1535 as the first Ottoman Capitulation; but it is clear that Capitulations were granted by the Ottoman Sultans before the fall of Constantinople, and that even after the capture of that city several states received Capitulations before that granted to France; while the Venetian Capitulation of 1454 had already been renewed in 1480 and 1481 by Mohammed II., by Bayazid II. in 1482, by Selim I. in 1511 and 1516, and by Suleyman I. in 1521 and 1534.[1]

The Venetian Capitulation of 1454 stipulates for reciproeal rights in favour of the merchants of each state to enter and carry on business in the other state freely and without any inconvenience, subject to a payment of a duty of 2 per cent. on such merchandise as may be sold there. The Venetians are further granted the privilege of having the succession of their property regulated by their own laws of intestacy; and they may send a baily to Constantinople, who shall have jurisdiction in civil matters, and administer justice as between Venetians of whatever class. Thus the Venetian Capitulation recognised the fundamental privileges granted by the earlier Mohammedan princes, whether of Egypt, Tunis or Morocco, as well as those granted by the Christian princes of the Levant and Constantinople. The conquering Ottomans re-established, in its full extent, the régime which had already been in force for more than four centuries. The French Capitulation of 1535 is simply another example of the same system. The first article accords permission to the French merchants to enter the Ottoman territory "freely and in security," to travel by land or sea, or to reside there; and Article 2 allows them to buy or sell, subject only to the ordinary duties. Article 3 permits the French king to appoint a baily at Constantinople, similar to the Consul at Alexandria; and both the baily and the consul are to have exclusive jurisdiction in civil and criminal cases, where both parties are French. Article 6 grants the privilege of absolute freedom in religion. And Article 7 states that the succession to a deceased

[1] See Noradounghian, vol. i.

Frenchman shall be regulated according to French law. The other articles contain nothing which is not in accordance with the general principles of the earlier Capitulations; the only remarkable innovation is that Article 16 allows the Pope, the King of England, and the King of Scotland to become parties to this Capitulation by simply notifying the fact within eight months. This last clause, simple as it may appear, is the first sign of a new departure in the Capitulations; it is the first appearance of a new characteristic in the Capitulations, and that characteristic one which rendered the later Ottoman Capitulations essentially different to the earlier Capitulations with which we have been dealing up till now.

The new element, which first appears in the French Capitulation of 1535, and which later became so remarkable, was that it and subsequent Capitulations became essentially political. The original Capitulations were free grants by a sovereign authority to foreign merchants, these grants being for the most part in accordance with the rules of Mohammedan Law; and the privileges accorded by these grants being the same for each nation. Under the earlier Capitulations the subjects of each nation were placed upon a footing of equality with one another; each received the same privileges. But in the Turkish Capitulations we find an entirely different spirit gradually pervading the whole system of Capitulations. The same fundamental privileges may be granted by the Turkish Capitulations, the privileges which were in accordance with Mohammedan Law; but we also find each nation striving to obtain additional privileges, and even privileges which were not in accordance with Mohammedan Law, or not in accordance with the integrity of the sovereign power in the state. The ambassador of one state would obtain a privilege which had not previously been accorded to any other state, the ambassadors of the other states would immediately intrigue to obtain this privilege, and yet other privileges; then the first ambassador would continue in his policy and try "to go one better" than his colleagues, or might intrigue to have their privileges cancelled. The Turkish Capitulations, in short, became involved in perpetual scenes of political intrigue and political rivalry.

The origin of the French Capitulation of 1535 was essentially political. It is doubtful whether the commerce of France with the East at this time was sufficient in itself to justify the grant of a Capitulation. Engaged in wars abroad, and hampered by disturb-

anees at home, her eommeree with Egypt would have appeared suffieient to oecupy her. But in additiou to this François I. of Franee was pledged by the Treaty of Madrid, 1525, to make a new erusade against the Turks; and in 1532 he entered into a further allianee with Henry VIII. of England against the Turks. But in spite of this there was one very strong argument in favour of a politieal alliance between Franee and Turkey at this time. The ambitions of both rulers were eheeked by the power of Austria. François was at the moment a eaptive in Spain. Negotiations were opened as early as 1525, and a secret alliance was entered into with Turkey[1] at the very moment at whieh François was pledging himself to aet with the King of England against Turkey. The allianee was not avowed till 1534, and its first fruits were the Capitulation of 1535.

The first and most important subject of political intrigue and rivalry was the question of proteetion. Franee elaimed that she had a right to eonsider the merehants of all European States, with the exception of the Venetians, as being under her "protection"; that is to say, all these merehants were to be treated as her subjeets, and be under the jurisdiction of her eonsuls. The advantages to Franee of such a eondition of affairs would be eonsiderable, for, apart from the prestige which she would acquire, the revenues of her eonsuls would be very considerably augmented. As a question of faet, it is probable that, apart from the Italian States and Ragusa, Franee had no important eommercial rivals at this time in Constantinople; and sueh foreign merehants as there were, who did not belong to a state having a Capitulation, would be eontent to place themselves under the proteetion of so powerful a state as Franee; especially as Veniee was at war with Turkey. But France was not eontent with the voluntary subjeetion of individual merchants. In 1540 the Venetian Capitulation was onee more renewed; but in 1554, when Genoa attempted to obtain a similar renewal, she was suceessfully opposed by the French ambassador, and did not obtain a renewal till 1612. Florenee reeeived a renewal in 1562, but an attempt to

[1] In Hellert's French translation of Von Hammer, vol. v. p. 150, there is a remarkable letter from Soleyman to François, promising him assistance. There is also another letter, written in 1528 by Soleyman, and quoted in the same work, in answer to requests made by the French king in favour of the Christians of the Latin Church of Jerusalem.

obtain a further renewal in 1578 was likewise opposed by France. Similarly, Ragusa had received Capitulations from Turkey, and an attempt was made about this time to have them renewed; it was only partially successful, and on the death of their consul they were not, owing to French opposition, allowed to nominate a successor. It is instructive also to notice that the French renewal of 1569 stipulates not only for French subjects but also for those foreigners who are accustomed to come under the flag of France: "Comme Génevois, Sicilians, Ancônetois et autres."

Spain and Portugal, the great maritime powers of this time, had no Capitulation with Turkey, nor is it likely that their commerce with Turkey was such as to require the grant of these privileges; their direct commerce with the East and with America would be such as to minimise the attractions of the trade with Constantinople. The trade of England with the Levant, as Hakluyt tells us, was at this time passing through a period of depression; its revival, however, was soon to commence.[1] On the 28th October 1578 William Hareborne arrived in Constantinople as agent to certain London merchants, there "he behaved himselfe so wisely and discreetly, that within few moneths after he obtained not only the great Turkes large and ample privilege for himselfe, and the two worshipfull persons aforesaid, but also procured his honourable

[1] Hakluyt, vol. v. pp. 62, 63, and Hakluyt, vol. v. p. 167: "This trade into the Levant was very usuall and much frequented from the yeere of our Lord 1511, till the yeere 1534, and afterwards also, though not so commonly untill the yeere 1550. . . . Since which time the foresaid trade (notwithstanding the Grand Signiors ampill privilege graunted to M. Anthony Jenkenson, 1553 . . .) was utterly discontinued, and in manner quite forgotten, as if it had never bene, for the space of 20 yeeres and more."

Hakluyt, vol. v. pp. 109, 110: "The safeconduct or privilege given by Sultan Solyman the great Turke, to Master Anthony Jenkinson at Aleppo in Syria, in the year 1553." This grants the right to enter harbours; freedom from "custome or toll whatsoever, save only our ordinary duties;" the right to "traffike, bargaine, sell and buy, lade and unlade, in like sort and with the like liberties and privileges, as the Frenchmen and Venetians use, and enjoy, and more if it bee possible, without the hinderance or impeachment of any man. . . ."

Hakluyt, vol. v. pp. 192 to 202: "The Levant Company's Charter. The Letters patent, or privileges graunted by her Majestie to Sir Edward Osborne, Master Richard Staper, and certaine other Marchants of London for their trade into the dominions of the great Turke, in the year 1581."

Hakluyt, vol. v. p. 260. Reference in letter of Edward Osborne, Mayor of London, to the privileges granted to Queen Elizabeth by the Grand Signior's "Letter to King of Alger, 20 of July 1884."

and friendly letters unto her Majestie in manner following."[1] A letter from the Sultan, Murad Khan, of 15th March 1579, was sent to Elizabeth. This letter gives a free conduct to all English merchants coming to Constantinople, and requests that similar privileges of entry and commerce may be granted to Turkish subjects in England. "We have therefore sent out our Imperiall commandement to all our Kings, judges, . . . straightly charging and commanding them, that such foresaid persons as shall resort hither by sea from the Realme of England, either with great or small vessels to trade by way of marchandize, may lawfully come to our imperiall Dominions, and freely returne home againe, and that no man shall dare to molest or trouble them. And if in like manner they shall come into our dominions by land . . . no man shall at any time withstand or hinder them; but as our familiars and confederates, the French, Venetians, Polonans, and the King of Germany, with divers other our neighbours about us, have libertie to come hither, and to returne againe into their owne countreys, in like sort the merchants of your most excellent Royall Majesties Kingdome shall have safe conduct and leave to repayre hither to our Imperiall dominions, and so returne again into their owne Country; straightly charging that they be suffered to use and trade all kind of marchandize as any other Christians doe, without let or disturbance of any. Therefore . . . it shall be meet . . . that you likewise bethinke yourselfe of your like benevolence . . . and that like libertie may be granted by your Highnesse to our subjects and merchants to come with their merchandizes to your dominions, either by sea with their ships, or by land with their wagons or horses, and to returne home again. . . ."[2]

From Elizabeth's reply, of 25th October 1579, it would appear as if this safe-conduct only referred to certain individual merchants, and not to all her subjects; thus she writes:[3] "Wee desire of your highnesse that the commendation of such singular courtesie may not be so narrowly restrained to two or three men onely, but may be inlarged to all our own subjects in generall." Elizabeth then explains that it will be for the Sultan's benefit that this privilege should be extended, so excellent are the products of England: "So y^{t} there is no nation

[1] Hakluyt, vol. v. p. 169.
[2] *Ibid.*, pp. 169 to 171.
[3] Hakluyt, vol. v. pp. 175 to 178.

that can do without them, but are glad to come by them, although by very long and difficulte travels." Moreover, direct trade is much cheaper. "And furthermore, we shall graunt as equall and as free a libertie to the subjects of your highnesse with us for the use of traffique, when they wil, and as often as they wil, to come and go to and from us and our Kingdomes. Which libertie wee promise to your highnesse shalbe as ample, and as large as any was ever given . . . to your subjects by the aforesaid princes your confederates, as namely the King of the Romanes, of France, of Poland and the common wealth of Venice. . . ." This letter was received favourably, and Capitulations of the fullest character were granted to England in June 1580.

Du Rausas,[1] founding on De Hammer, says that this Capitulation was never put in force, as it was revoked by the Sultan on the demand of the French Ambassador. But that a similar Capitulation was granted to England in 1583, and was duly signed by Hareborne, the English Ambassador, in the name of Queen Elizabeth, and by the Grand Vizier in the name of the Sultan. Whether this be true or not, France obtained a renewal of her Capitulation in 1581, the first article of which is as follows :—"Que les Vénitiens en hors (exceptés) les Génois et Anglais, et Portugais et Espagnols, et marchands Catalans et Siciliens et Ancônitains, et Ragusais et entièrement tous ceux qui ont cheminé sous le nom et bannière de France d'ancienneté jusqu' à ce jourd'huy et en la condition qu'ils ont cheminé, que d'ici en avant, ils ayent à y cheminer de la même manière." The French claim to protect the merchants of all European States, with the exception of Venice, is here clearly stated, and appears in a Capitulation in unequivocal terms for the first time. It is difficult to accept the arguments which are now set forward to support the French contention. There was undoubtedly, at the beginning of the sixteenth century, a condition of fact whereby many merchants belonging to different European States were glad to be able to place themselves under the protection of France. There was, as we have pointed out, little choice open to them; France's only rival was Venice, and Venice was frequently at war with Turkey, whereas France was the ally of the Sultans. But this relation was one of fact and not of law; so soon as the different

[1] Du Rausas, "Le Régime des Capitulations dans l'Empire Ottoman." 2 vols. Paris, 1902. Vol. i. p. 33.

States were in a position to protect their own subjects, France's protection should have *ipso facto* come to an end. It is argued that custom is of greater legal weight in the East than in Western States. This is undoubtedly true; but a custom, even in the East, of only some thirty years' standing is hardly of the same value as law; and this is all the more true when that custom really owes its existence to the fact of oppression of the weak by the strong. A practice which is forced upon the parties is hardly a reasonable custom still binding on the weak when they have become sufficiently strong to protect themselves.

It has been argued that to the Sultans all Europeans must have appeared the same. It is undoubtedly true that in the Mohammedan Law there is no idea of nationality: that the division is one of belief, and not of allegiance to any earthly ruler. But were the Sultans so ignorant of the European principles of nationality? Their relations with different Christian States had been considerable, and they must therefore have acquired some rudimentary knowledge concerning the differences existing between one European State and another. The Sultan Suleyman had, moreover, been sufficiently clear in regard to these distinctions to understand the advantage to be gained by him from an alliance with France against Austria. The argument comes badly from the French, who owed their first Capitulation to the fact that the Sultans *did* recognise that all European States were not the same. The Sultans were also soon to learn that all European States had not exactly the same form of religion—a fact of which they were probably already aware. A favourite criticism of Hareborne's tactics has been that he was not acting quite properly when he explained that the English were much more nearly in sympathy with the Mohammedans, because of the religious abhorrence of both for images! Another form of the same argument is to say that all Europeans were called Franks by the Mohammedans, and that this word was to them synonymous with "Français." But the truth is that the word "Frank" had been in common use in the East long before the French merchants came to Constantinople. "A name of some German tribes between the Rhine and the Weser had spread its victorious influence over the greatest part of Gaul, Germany, and Italy; and the common appellation of Franks was applied by the Greeks and Arabians to the Christians of the Latin Church—the nations of the West, who stretched beyond their knowledge to the

shores of the Atlantic Ocean."[1] There is just enough truth in this confusion to make the argument appear at first sight plausible; but the fact which it assumes is not borne out by the events of history.

The real state of affairs was that France had acquired a very considerable influence over the Sultans, and that she naturally enough did not hesitate to use that influence for the advancement of her own interests, whether political or pecuniary. It is likewise very natural that she should have done what she could to maintain this influence, and to prevent as much as she could the growing independence of other European States, especially as that independence entailed a lessening of her influence. The subsequent history of the Capitulations is, in consequence, intimately bound up with the history of this struggle, France's claim of protection over Europeans in Turkey, and the growing independence of the other European States.

The English Capitulation of 1580 or 1583 was on the same lines as the French Capitulation of 1535, and contains all the fundamental privileges and immunities with which we are now so familiar. According to Noradounghian, it would appear that the English Capitulation was renewed in 1603, 1606, 1622, 1624, 1641, 1662, and finally in 1675. That is to say, that each successive Sultan, from Murad III. to Mohammed IV., renewed the English Capitulations, with the exception of Mustaffa I., who was Sultan on two occasions for periods not greater than a year each. The Capitulations were renewed twice during the reign of Mohammed IV. The final Capitulation of 1675 is a very good example of the Constantinople type of Capitulation, as we have in it the different steps by which the final Capitulation was developed: first, we have the original Capitulation of 1580, and thereafter, step by step, each additional stage till the whole was complete.[2] This feature of these Capitulations explains the difficulty often experienced in their renewal. The ambassadors were not content to receive a renewal, they required an extension as well; and it was over this extension that the political battle raged most fiercely. Although the number of French renewals is greater than that of the English, the series is not so complete, there being several Sultans who did not grant renewals.

[1] Gibbon, vol. vi. p. 98.

[2] Hertslet, "Commercial Treaties," vol. iv. pp. 346 to 370.

The victory of Hareborne in 1583 was the first inroad into the French claim of protection. The renewal of the French Capitulation in 1597 is instructive; it acknowledges the English success, but states the French claim in terms which cannot be misunderstood, while at the same moment it warns the English Ambassador off the field. "De nouveau nous commandons que les Vénitiens et Anglais en là, toutes les autres nations ennemies de notre Grande Porte, lesquelles n'ont d'Ambassadeur à icelle, voullant trafiquer par nos pays, elles aient d'y marcher sous la bannière de France et voulons que pour jamais, l'Ambassadeur d'Angleterre ou autre n'aient de l'empescher, ou contrarier à ce notre vouloir, et, en cas qu'il se fût donné par ci-devant, ou qu'il se donnât par ci-après commandement contraire à cet article, nous commandons que, nonobstant, cette Capitulation soit valable et observée." This article is repeated almost word for word in Article 6 of the French renewal of 1604. In spite of it, however, the English Ambassador in 1606[1] obtained a similar

[1] "That differences and disputes having heretofore arisen between the Ambassadors of the Queen of England and King of France touching the affair of the Flemish merchants, and both of them having presented memorials at our Imperial stirrup, praying that such of the said merchants as should come into our sacred dominions might navigate under their flag, hatti-sheriffs were granted to both parties; but the Captain Pacha Sinan, the son of Cigala, now deceased, who was formerly vizier, and well versed in maritime affairs, having represented that it was expedient that such privilege should be granted to the Queen of England, and that the Flemish merchants should place themselves under her flag, as also the merchants of the four provinces of Holland, Zetland, Friesland, and Guelderland; and all the other viziers being likewise of opinion that they should all navigate under the Queen's flag, and, like all the other English, pay the consulage and other duties, as well on their own merchandize as on those of others landed by them in their ships, to the Queen's Ambassadors or Consuls, it was by express order and Imperial authority accordingly commanded that the French Ambassadors or Consuls should never hereafter oppose or intermeddle herein, but in future act conformably to the terms of the present Capitulation."—Capitulation of 1675, art. 33.

The French Capitulation of 1607 says: "Nous commandons ceci; que depuis ce jourd'hui toutes les nations étrangères, lesquelles n'ont point d'ambassadeur à notre heureuse Porte, venant à trafiquer en notre Empire, aient à y venir sous la bannière de l'Empereur de France, selon l'ancienne coutume, et aient à rendre obéissance aux Ambassadeurs et Consuls de France. Et que les Capitulations et commandements obtenus des Anglais sur cette matière, qui se trouveront contradictoires à notre sublime Capitulation, ne soient observés en aucune façon, en quelque Echelle de notre Empire qu'ils soient présentés." This does not appear to have ended the matter, as we learn from the preamble of a later Capitulation that another Ambassador arrived from England with presents, "which being graciously accepted," he made certain requests, "one of which

right of protection in favour of England in respect of Dutch merchants; but this was in turn revoked by a fresh recognition of the French right in 1607, and the Article granting England protection in regard to the Dutch was deleted. The French were eventually faced by a dilemma, as the Dutch, although possessing a great carrying trade, had no commerce of their own in the East. English goods were in consequence frequently carried by Dutch ships; and the French Ambassador decided that under the circumstances it was wiser to assist Holland to independence rather than allow her to increase her intercourse with England, which would be to the advantage of England. In consequence, we find a reversal of French tactics, and the French Ambassador in 1613 did all he could to assist Holland to obtain a Capitulation. In spite of repeated recognition of the French claim to protection, custom was now turning against France. England and Holland were now added to Venice as States independent of French protection. Austria was the next to follow. Having re-estab-

was, that certain Capitulations having been granted in the days of our grandfather, of happy memory (whose tomb be ever blessed!), to the end that the merchants of Spain, Portugal, Ancona, Sicily, Florence, Catalonia, Flanders, and all other merchant-strangers might go and come to our sacred dominions and manage their trade, it was stipulated in such Capitulations that they should be at liberty to appoint consuls; but each nation being unable to defray the charge and maintenance of a consul, they were left at liberty to place themselves under the flag of any of the kings in peace and amity with the Sublime Porte, and to have recourse to the protection of any of their Consuls, touching which privilege divers commands and Capitulations were repeatedly granted; and the said merchants having, by virtue thereof, chosen to navigate under the English flag, and to have recourse in our harbours to the protection of the English Consuls, the French Ambassadors contended that the said merchant-strangers were entitled to the privilege of their Capitulations, and forced them to have recourse in all ports to their Consuls, which being represented by the said nations to our august Tribunal, and their cause duly heard and decided, they were for a second time left to their free choice, when, again having recourse to the protection of the English Ambassadors and Consuls, they were continually molested and opposed by the French Ambassador, which being represented by the English, with a request that he could not accept the articles added to the French Capitulations respecting the nations of merchant-strangers, but that it should be again inserted in the Capitulations that the said nations should in the manner prescribed have recourse to the protection of the English Consuls, and that hereafter they should never be vexed or molested of the French on this point, it was by Imperial authority accordingly commanded that the merchants of the countries aforesaid should in the manner prescribed have recourse to the protection of the English Ambassadors and Consuls, conformably to the Imperial commands to them conceded, and which particular was again registered in the Imperial Capitulations, viz., that there should never be issued

lished peace with Turkey in 1606, she received a Capitulation in 1615, subsequently renewed on several occasions. In 1711 Russia received certain commercial rights in the Treaty of the Pruth, and in the Treaty of Constantinople in 1720 she received the right to appoint a consul in that city; and in 1783 she received her great Capitulation. Sweden received a Capitulation in 1737; Denmark in 1756; Prussia in 1761; Spain in 1782; Belgium in 1839; Portugal in 1843; Greece in 1855; the United States of America in 1830; and Brazil in 1858. Apart from these, Capitulations had been also granted to many of the smaller Italian States, to Bavaria, and the Hanseatic Cities. Thus the only European States not having Capitulations with Turkey by the middle of the nineteenth century were Switzerland and the Papal States. The latter, in so far as they were distinct from Italy, were placed under the protection of France. The position of Swiss subjects within the Ottoman Empire is dealt with by a Conference held at Berne in 1871, in virtue of which they were given a choice of either placing themselves under the protection of Germany or the United States, as they pleased.

The French claim to protect the subjects of all States which have not received Capitulations was fully recognised in the last French Capitulation of 1740, and it is claimed that this right still exists. It is, however, interesting to notice that during the Greek and Turkish War of 1897 Greek subjects resident in Egypt were placed under the protection of England, France, and Russia.[1]

This claim of protection must be distinguished from two other forms of protection, which will be dealt with later—religious protection and the protection of individual Ottoman subjects. The claim we are dealing with was a claim to protect all the subjects of European States which had not received grants of privileges. These protected persons were foreigners, and the result of the "protection" was to assimilate them as much as possible to Frenchmen. Religious protection was the protection of religious corporations or individuals when acting in a religious capacity. The protection of native Ottoman

any commands contrary to the terms of these Capitulations which might tend to the prejudice or breach of our sincere friendship and good understanding; but that on such occasions the cause thereof should first be certified to the Ambassador of England residing at our Sublime Porte, in order to his answering and objecting to anything that might tend to a breach of the articles of peace."—Capitulation of 1675; Hertslet, iv. p. 346.

[1] "Egyptian Official Documents," 1897, p. 254.

subjects was an attempt to treat Ottoman subjects as if they were subjects of the foreign protecting State; it was a device to get round the restrictions of naturalisation. The chief interest of the first two forms of protection is that they were principally used as a means of increasing the political prestige of the protecting State; and they are of special interest to us here, as they offered a means by which the foreign embassies greatly added to the number and extent of the privileges and immunities granted by the original Capitulations. Individual protection of Ottoman subjects will be discussed under the question of Ottoman nationality; it is sufficient to mention here that all the later Capitulations contained a special clause prohibiting the protection of Ottoman subjects.

CHAPTER VII

RELIGIOUS PROTECTION

THE French claim to act as the Protector of all European merchants within the Ottoman Empire received its first check at the hands of the English Ambassador in 1580, and during the next two centuries the gradual but complete emancipation of all the other European States followed; but before this claim of Protection had disappeared another claim was initiated by Louis XIV. of France. This new claim was that France had the right to protect the Christians within the Ottoman Empire, a claim which was destined to lead to even greater political consequences than the former claim. The policy of both Louis XIV. and his minister, Colbert, was the aggrandisement of France in the East, but the means adopted by each to attain this object was different. Colbert's policy was purely commercial: the commerce of France was to be developed by every possible means. Ordinances were issued organising a system of reports by the French Consuls to the Chamber of Commerce at Marseilles, and to the Ministry of Marine; Ambassadors received instructions to watch over the commercial rights of French merchants, and to endeavour, when the Capitulations fell to be renewed, to obtain new and greater privileges; other Ordinances were even issued to regulate the private life of Frenchmen within the Ottoman Empire. Louis' final object was the same as that of his minister, but he hoped to attain it by establishing a French Protectorate over the Christians of the Ottoman Empire. His immediate policy was religious, but his ultimate object was purely political, namely, to increase French political influence over the Porte.[1]

"La tradition, les traités, les principes généraux du droit capitulaire, voilà la triple base sur laquelle le protectorat de la France est solidement établi."[2] The first act of the French Government which

[1] "Sa politique, comme celle de Colbert fut toujours inspirée par l'unique souci de la grandeur française:" du Rausas, vol. i. p. 56.

[2] du Rausas, vol. ii. p. 82.

is used to construct a foundation for this French claim is an autograph letter of François I. to the Sultan in 1528, complaining that a church belonging to some Christians in Jerusalem had been taken from them and turned into a mosque. Although the church was not restored, the Sultan guaranteed that the Christians would be unmolested in future; that they would be permitted to keep their present churches and other buildings, and be free to restore them; and that no one should be allowed to oppress or torment them. In the Middle Ages the Christian nations had made heroic efforts to reconquer the possession of the Holy Places where Christ had been born, had lived, and been crucified; but the difficulties and trials entailed by such undertakings, pre-occupation caused by disturbances at home and jealousies abroad, had long discouraged them from making any new attempt. But although the Crusades had ceased, the ships of the Italian merchants continued long after to carry great numbers of Christians to Palestine, and monasteries were set up at Jerusalem, Bethlehem, and Nazareth for the entertainment of pilgrims, and there the more religious remained, devoting their lives to the service of their Lord. There, far from the land of their fathers, and surrounded by the hated unbeliever, these devoted exiles did what they could to commemorate the life of Christ, building churches and monuments, and guarding as best they could the Holy Places. The Ottoman Government was essentially tolerant, but the control of distant officials has never been the strongest point in its administration; the local officials may not have been so sympathetic, and it may well be that the Christians were often over-zealous. It must have been some local trouble such as this which offered the first opportunity to the French Government to intervene in the interests of the Christians.

The next step in the history of the creation of this right of protection was the insertion in the Capitulation of 1535 of the clause, already referred to, in virtue of which the Pope might participate in the advantages conferred on France by that concession. In 1540 François I. again intervened to prevent "the church of Saint-Benoît, founded by the Genoese at Galata," from being confiscated; on this occasion the intervention was successful. Henri II. continued the policy, and appears to have intervened with success; the most important occasion being in 1559, when the French Ambassador obtained the release of certain Flemish, Swiss, German, and

Venetian pilgrims, who had been arrested on the coasts of Syria and reduced into slavery by the Turks. For two years the Ambassadors of the Empire and of Venice had claimed their release without effect; but as soon as France intervened their release was obtained. In the same year the French Ambassador obtained a Firman from the Sultan guaranteeing the safety of pilgrims to the Holy Places.[1] In 1604 there appears for the first time in a French Capitulation a clause which expressly guarantees the security of pilgrims and the Christians established at Jerusalem. "Art. 4. . . . Nous commandons aussi que les sujets dudit empereur de France et ceux des princes, ses amis, alliés et confédérés puissent, sous son aveu et protection, librement visiter les saints lieux de Jérusalem, sans qu'il leur soit fait ou donné aucun empêchement. Art. 5. De plus, pour l'honneur et amitié d' icelui empereur, nous permettons que les religieux qui demeurent en Jérusalem, Bethléem et autres lieux de notre obéissance, pour y servir les églises qui s'y trouvent d'ancienneté bâties, y puissent avec sûreté séjourner, aller et venir, sans aucun trouble et destourbier, et y soient bien reçus et protégés, aidés et secourus en la considération susdite."[2] This clause was further amplified by a Hatti-Sherif granted in the same year. Louis XIII., continuing the policy of his predecessors, had to defend the claims of the Jesuits, who had been established at the Church of Saint-Benoît since 1585, against the English and Venetians. Capuchins about the same time were sent to Constantinople. But it was again the Holy Places which were to be the scene of renewed difficulties and the intervention of France. This time, however, it was not the Turks, but the Eastern Christians, Orthodox Greeks, and Armenian Catholics who were to be the other parties. The rivalry between the Eastern and Western Churches was one of very long standing; it was now to come to a head again in Palestine, and eventually to lead to the Crimean War. Both parties claimed to have the right to exclusive possession of the Holy Places, basing their claims on Firmans received from the Mohammedan rulers. Louis XIII. instructed his ambassador to support the Latin Christians: confirmation of their rights was officially given by the Porte, only to be rendered useless by a similar recognition of the Greek Church claims. Firmans recognising the Latin Church as the

[1] Firman of 7th June, 1559: de Testa, vol. iii. p. 327.

[2] Noradounghian, vol. i. p. 95: de Testa, vol. iii. pp. 314, 315.

exclusive possessor of the Holy Places were obtained in 1620, 1621, 1625, 1627, 1630, 1632, 1633, and 1635; the number and frequency of these is the best criticism of their value. Such was the position when Louis XIV. inaugurated his new policy.

The last Capitulation obtained by France had been in 1604, and although four Sultans had reigned since then no renewal had been obtained. Louis determined to have a new Capitulation, but one with much wider privileges than had ever been granted before. In 1670 instructions were sent to the French Ambassador as to the nature of the privileges to be demanded; and in addition to extensive commercial privileges, the questions of the French Protectorate and the possession of the Holy Places were now to be included. The French demand in regard to the latter point was—"Art. 3. Que les religieux français et autres desservant l'église du Saint-Sépulcre et autres Saints-Lieux soient conservés dans la possession desdits Saints-Lieux, qu'ils gardent depuis tant de siècles sous la protection de l'Empereur de France. Art. 4. Que les lieux usurpés par les Grecs, et particulièrement la Grotte où est né Jésus-Christ et le Mont du Calvaire, ensemble toutes les appartenances leur soient rendues." But when the Capitulation was granted in 1673, the terms were so obscure on this point that the Latins were unable to obtain the keys of the Holy Places at Bethlehem; nor was Louis's claim to be considered the protector of all Christians more successful, the Capitulation limiting his right of protection strictly to foreign Catholics. The policy of intervention, however, never ceased, and the French Ambassador used his influence on behalf of Maronites and Mirdites, as well as in the interests of Capuchin and Jesuit; the Catholic missions were systematically increased, and the conversion of unorthodox Christians was encouraged. The appointment of a French Consul at Jerusalem was the next step. Louis XIII. had attempted to appoint a Consul in 1624, but had been forced to recall him owing to the opposition of the Italian and Spanish Orders, especially the Franciscan Fathers de Terre-Sainte, championed by Venice. It was not till 1713 that a permanent appointment could be made, and even then the Consul's difficulties were such that his appointment cannot have been an enviable one. Christians of all the Latin denominations were willing to seek the assistance of the French Consul when they found themselves in difficulties, but they were unwilling to place themselves under his orders at other times, although control was undoubtedly

necessary, as the system of attempting conversions, not only among the Schismatic Christians, but even among Moslems, was a most dangerous one. Persuasion having failed, a policy of compulsion was inaugurated by Louis XVI. in an Ordnannance of 1781. The list of prohibitions is long, and the penalty was expulsion from the Ottoman Empire. The law was to apply not only to French, but also to those of other nations who were under the protection of France. The French Revolution, however, prevented the new policy from being fully tested.

During the Revolution the claim of Protection disappeared, since the policy of the new Government towards the Clergy in France was not such as to encourage their brethren in the East to seek the protection of its representatives. The Pope advised the Catholics within the Ottoman Empire to place themselves under the protection of Austria. But Napoleon, in 1802, once more took up the policy of the Ancien Régime, which was also adopted by his successors; nor was the task a lighter one in the nineteenth century than it had been at an earlier date. The disputes between the Latin and Eastern Churches were as bitter now as they had been two hundred years ago, but now the Greeks turned to Russia as their natural champion. So long as Russia remained insignificant the rivalry had been of no great international importance, but as Russia increased in power and importance the ambition of her clients increased proportionately. The position is admirably described by a recent French author:— [1] "Ils" (the Greeks) "procédèrent par empiétements successifs réclamant d'abord avec une apparente modestie la possession commune de certains sanctuaires; ils ne demandaient, disaient ils, que le simple droit d'officier à l'autel, fût-ce après les Latins; bientôt ils voulurent officier les premiers, puis officier seuls. Ils sollicitèrent d'abord une clef, puis deux; puis, quand ils les eurent toutes, ils ne les rendirent point. Ici ils usurpèrent quelques cloîtres ou quelques chambres; là ils avancèrent un mur pour agrandir leur église; ailleurs ils construisirent entre les piliers mêmes d'une coupole. Ils détruisaient volontiers ce qu'ils ne pouvaient prendre. Ils enlevèrent enfin de Bethléem l'étoile d'argent qui y était depuis longtemps placé et que la piété des fidèles s'était accoutumée à vénérer. Plus le crédit de la Russie grandissait, plus leur ardeur envahissante croissait. Pendant

[1] "Histoire du Second Empire." P. de la Gorge. Paris, 1905: vol. i. bk. iii. p. 137.

ce temps, les Pères de l'Eglise latine réclamaient; ils réclamaient en termes véhéments, trop véhéments peut-être si l'on ne songe qu'à l'objet de la querelle et si l'on ne se rapelle que, derrière ce différend un peu mesquin, se couchait la rivalité de deux Eglises et même la lutte de deux races, l'une jouissant d'un antique prestige, l'autre voulant déborder de toutes parts et, à la faveur de la communauté de symbole, absorber toute influence dans la sienne."

France took the matter up seriously in 1850, demanding the fulfilment of her rights reasserted in the Capitulation of 1740. Turkey was in an awkward position. France had been long looked upon as a sure friend in extremity, but Russia was too near a neighbour to offend: to temporise was the only policy; and it is a policy in which Turkey is a past-master. First, the Firmans required careful study; then came Ramadan, followed by the Bairam holidays; then the minister was absent from Constantinople; then a Mixed Commission was appointed, which decided more favourably for the Latins than the Greeks; Russia was dissatisfied, and a purely Mohammedan Commission was appointed, and a Firman granted in 1852 very unfavourable to France; but French interest at home and the Austrian jealousy at Constantinople induced the French Ambassador to accept what he could get. Hardly, however, did the affair seem settled when the Porte granted a secret Firman to the Greeks restoring their rights in full. When this deceit was discovered matters had advanced considerably; England and Russia were discussing the division of the "Sick Man's" estate, and Menschikof was in Constantinople. France thought it best to be done with the question of the Holy Places, so accepted a new Firman and joined with England to oppose Russian claims. Then followed the Conference of Vienna, the destruction of the Turkish fleet at Sinope, and the declaration of war against Russia.

There is no doubt that on her first plea the French claim to a right of protection over the Catholics in the Ottoman Empire is a strong one; with the exception of one interruption during the period of the Revolution, the custom of intervention was continuous right down to the Crimean War; nor does the right, although frequently disputed, ever seem to have been exercised systematically by any other nation. In reference to her second plea, France can point not only to the Capitulations of 1604, Articles 4 and 5; 1673, Articles 1, 2, 3 and 43; 1740, Articles 1, 32, 33, 34, 35 and 82: but also to

the Treaty of Berlin of 1878, and especially to the clause in Article 62 where "Les droits acquis à la France sont expressément réservés, et il est bien entendu qu' aucune atteinte ne saurait être portée au statu quo dans les Lieux-Saints."[1] This position has since then been confirmed by the Pope, first by a circular of 22nd May 1888, of the Congrégation de la Propagande, in the following terms: "On sait que, depuis des siècles, le protectorat de la nation française a été établi dans les pays d'Orient, et qu'il a été confirmé par des traités conclus entre les gouvernements. Aussi l'on ne doit faire, à cet égard, absolument aucune innovation: la protection de cette nature, partout où elle est en vigueur, doit être religieusement maintenue, et les missionnaires doivent en être informés, afin que, s'ils ont besoin d'aide, ils recourent aux consuls et autres agents de la nation française . . ."; secondly by a letter from the Pope of 20th August 1898, "La France a, en Orient, une mission à part que la Providence lui a conférée: noble mission qui a été non seulement consacrée par une pratique séculaire, mais aussi par des traités internationaux, ainsi que l' a reconnu de nos jours notre Congrégation de la Propagande, par sa déclaration du 22 mai 1888. Le Saint-Siège, en effet, ne veut rien toucher au patrimoine que la France a reçu de ses ancêtres, et qu'elle entend, sans nul doute, conserver en se montrant toujours à la hauteur de sa mission. Nous désirons que les membres de l'association déjà formée, s'inspirant pleinement de ces vues élevées et ayant à cœur les grands intérêts de ea religion et de la patrie, prêtent à la France un concours généreux dans l'accomplissement de son mandat six fois séculaire."[2] Even the recent policy of the French Government has not, as yet, brought about any change in the legal position of France as protector. The third plea is not as convincing; the argument is however simpler: "France has the right to protect the interests of any sovereign who has not received a Capitulation from the Sultan, the Pope has not received a Capitulation, therefore it is the right and duty of France to protect the interests of the Pope within the Ottoman Empire."

The arguments in favour of a right of France to protect the Catholics in the Ottoman Empire have now been fully stated; but

[1] Noradounghian, vol. iv. p. 192. See especially the Minutes of the sitting of the Berlin Congress of 4th July 1878, where this article was discussed and this saving clause expressly added. Noradounghian, vol. iv. p. 114.

[2] Quoted by du Rausas, ii. p. 129.

there are other claimants to a right of Religious Protection. The Venetian and Polish claims have no longer anything but a purely historical interest; they are based respectively on the Treaties of Passarowitz, 1718, and Carlowitz, 1699.[1] The Austrian claim is, however, still of practical value since she undoubtedly acts as Protector in Albania, Bulgaria, and Egypt.[2] In Egypt, Austria's right of protection is not exclusive, but refers only to the Franciscans of Upper Egypt, the Catholics of the Sudan, and the members of the Coptic community, who are Catholics. The Austrian claim is based upon Article 13 of the Treaty of Carlowitz, 1699, and Article 9 of the Treaty of Belgrade;[3] also upon the fact that when Venice became a part of the Austrian Empire in 1798, Austria succeeded to the former's treaty rights.[4] There has been a certain amount of continued custom, at least in the places mentioned, and the circular of the "Congrégation de la Propagande," already quoted, expressly says: "There, on the contrary, where Austrian protection has prevailed, there shall likewise be abstention from any change." The Austrian claim is in conflict with the French claim to the exclusive right of protection over *all* Catholics within the Ottoman Empire; but the Russian claim, although not disputing the justice of the French claim, has probably caused the greatest amount of trouble. The Russian claim is to protect the members of the Orthodox Church within the Ottoman Empire. The first act of intervention seems to have occurred in 1710, when Peter the Great unsuccessfully attempted to champion the Greek Church in their demand for the keys of the Holy Places, which were at the time in the possession of the Latins. The Treaty of Constantinople, 1720,[5] stipulates for the free passage of Russian pilgrims to Jerusalem; the Treaty of

[1] Article 22 of Treaty of 21st July 1718; de Testa, vol. i. p. 218; Article 7 of Treaty of 16th January 1699.

[2] France and Austria "concourent notamment à protéger la tribu catholique des Mirdites dont il fut question au traité de Berlin lorsque cette assemblée eut à discuter la proposition suivante présentée par M. de Saint-Vallier, au nom des plénipotentiaires de l'Autriche-Hongrie et de la France: 'Les populations mirdites continueront à jouir des privilèges et immunités dont elles sont en possession ab antiquo.' L'Autriche protège également l'église Sainte-Marie de Péra à Constantinople."—Arminjon, vol. i. p. 317; see also Noradounghian, vol. iv. p. 122.

[3] Noradounghian, vol. i. p. 189-195. Treaty of Belgrade, 18th September 1739, Article 9, Noradounghian, vol. i. p. 247.

[4] For criticism of Austrian claim, see du Rausas, vol. ii. pp. 119, &c., and 131, &c.

[5] Article 11, Noradounghian, vol. i. p. 232.

Belgrade[1] is practically in the same terms, but the Treaty of Kutschuk Kainardji leaves no doubt as to the pretensions of Russia. Article 7, "La Sublime Porte promet une protection constante à la religion chrétienne et aux Eglises de cette religion. Elle permet au Ministre de la Cour impériale de Russie de faire en toute occasion des représentations à la Porte tant en faveur de l'Eglise construite à Constantinople, et dont il sera fait mention dans l'Art. 14, qu' en faveur de ceux qui la desservent, et elle promet de donner attention à ces observations comme venant d'une personne considérée, et appartenant à une Puissance voisine et sincèrement amie."[2] It was in pursuance of this right that Russia invaded the Principalities of the Danube as a means of obtaining sufficient guarantee for the rights of the Orthodox Christians in the Ottoman Empire. No better example could be found than this of the dangers resulting from a right of protection. Even confined to its natural limits, a right of religious protection runs the great risk of conflict with other protectors as is shown in reference to the disputes as to the possession of the Holy Places; but when the right is used as a means of increasing political influence, the risks of International conflict are so greatly increased as to deprive the policy of the little justification it may possess; besides which it defeats its own original object, since there is no Government which knows better than Turkey how to play one Power off against another, and in so doing defeat any policy of reform. The whole history of this question confirms the opinion that the material interests of the Christians were too apt to be forgotten in the struggle to obtain increased political interest for the protecting Power.

An exact definition of the rights and duties claimed by France, in virtue of her power of Protection, is not easily stated; this very vagueness of the relation between Protector and Protected has been not the least of its merits from the point of view of the Protector. In the first place, we must distinguish the present right from the right of Protection over individuals, which is regulated by the Law of 1863. Religious Protection is essentially the protection of communities and not of individuals. If individuals are at any time protected in this way, it is because they have been interfered

[1] Article 12, Noradounghian, vol. i., p. 263.

[2] Treaty of Kutschuk Kainardji, 1774, Noradounghian, vol. i. p. 323. Article 8 repeats Article 11 of the Treaty of Belgrade.

with in their official rather than in their personal capacity—by which we mean, that they have been interfered with more in their religious than their private capacity. Secondly, since the Crimean War, and more especially since the Treaty of Berlin, a right of collective protection by all the Powers has more than once been exercised. The promulgation of the Hatti-Humayoun is the first example of this nature, and the right itself is expressly maintained in Article 62 of the Treaty of Berlin: "Le droit de protection officielle est reconnu aux agents diplomatiques et consulaires des Puissances en Turquie, tant à l'égard des personnes sus-mentionnées que leurs établissements religieux de bienfaisance et autres dans les Lieux-Saints et ailleurs." In fact, although France still claims an exclusive right of Protection over all the Roman Catholics in the Ottoman Empire, in virtue of the saving clause added to this article, there are few powers left exclusively in her hands.

It is said, in the first place, that the protecting Power has the duty of securing the proper exercise of the religious ceremonies of the Catholic Faith; but there can only be intervention if the exercise is "proper"—that is to say, the ceremony must be conducted within the walls of religious buildings, which themselves can only be built or restored with the express permission of the Porte.[1] Secondly, the protecting power has the right and duty of intervening to secure the full exercise of the privileges granted by Firman or Capitulation to religious institutions: thus they are entitled to certain reductions in reference to customs dues, and have the right to control and manage their own schools. Thirdly, although the protection refers to communities and not to individuals, the protecting Power ought to intervene to protect the individual members of such communities when disturbed in the exercise of their religion. The word "molesté" which is used in the Capitulations is of a very wide and general application.[2] It is in reference

[1] In Egypt permission to build or restore a religious building is not necessary, an example of the extension of the rights of foreigners by custom.

[2] "Mais, nous l'avons fait remarquer, par la force meme des choses, la protection religieuse réagit sur l'individu. La puissance protectrice est tenue de garantir aux religieux l'inviolabilité de leur personne; c'est là la troisième obligation principale qui lui incombe. Précisons les cas dans les quels cette obligation prend naissance. Elle prend naissance toutes les fois qu'un religieux est molesté par un Ottoman dans l'exercice ou à l'occasion de l'exercice de ses fonctions, ou, plus généralement, dans l'exercice ou à l'occasion de l'exercice de sa profession religieuse. Elle ne prend pas naissance, au con-

to this right that the greatest difficulty arises in practice, since it is generally very difficult to say whether an individual was disturbed in his religious and not in his personal capacity, and if it was in his personal capacity the proper persons to interfere are the agents of his own state and not those of the protecting state. Lastly, there is the duty of preserving the "status quo" in reference to the Holy Places.

The exclusiveness of these rights claimed by France has not remained undisputed. First, in reference to the right of intervention, in order to protect all Catholic communities and see that, subject to the permission of the Porte, they are allowed to build or restore their churches and schools, and are allowed freely to perform their religious exercises within these buildings, the exercise of this right is not only subject to the rights of Austria to intervene, in a similar manner, in favour of certain particular foundations, and of certain Catholic communities in certain provinces of the empire, but also certain other Powers have successfully contested this claim of recent years, in reference to new foundations; thus the "Congrégation de la Propagande," on 13th November 1894, admitted the rights of Germany in reference to certain foundations of the German Society of Palestine; and Italy's rights were similarly recognised in 1902 in reference to two religious foundations at Constantinople.[1] Secondly, in reference to the French claim to protect the priests, monks, sisters, &c., of the different Catholic communities, the exclusive right is not only contested by other Powers but also by the Porte. The legal advisers of the Turkish Government stated their case in a Memorial of 20th July 1892: "Si le Gouvernement français avait réellement un droit acquis à la protection générale, en Turquie, de tous les religieux catholiques et de toutes les nationalités étrangères, la seconde partie de l'article précité aurait nettement contredit le premier. Cette considération seule suffit pour établir que la France n'a entendu réserver, par les dispositions de l'article 62 du Traité de Berlin, que le maintien de 'statu quo' tant à l'égard des sanctuaires que de la

traire, si le religieux est molesté pour des causes étrangères à l'exercice de sa profession religieuse. Quant à la question de savoir si les causes pour lesquelles un religieux a été molesté, sont ou non étrangères à l'exercice de sa profession religieuse, c'est évidemment une question de fait à débattre entre la puissance protectrice et le Gouvernement ottoman; tout ce qu'on peut dire, c'est que, en cas de doute, il y a présomption, lorsqu'un religieux a été molesté, qu'il a été à l'occasion de l'exercice de sa profession religieuse." —Du Raussas, vol. ii. p. 156.

[1] "Corps de Droit Ottoman," George Young, Oxford, 1905, vol. ii. p. 132.

protection des religieux catholiques."[1] The conflict between France and other Powers generally arises in reference to consular intervention in consequence of crimes committed against priests or monks; since the Treaty of Berlin there have been several examples of decisions unfavourable to France; thus in 1874 the French Embassy had to yield the conduct of the case of the murder of a Prussian priest at Constantinople to the German Embassy, the French Ambassador enunciating the principle, "Si le caractère du moine est absorbé par sa nationalité nous nous retirons." In 1901, after the troubles between the Franciscans and Orthodox, Germany and Italy each protected their own subjects; and in 1902, when an Italian priest was murdered at Damascus, it was the Italian Consul who intervened.[2]

The last right claimed by France is the protection of the rights of the Latin communities in the Holy Places, and the Treaty of Berlin expressly preserves the "status quo." It is here that the French and Russian rights are liable to come in conflict. The "status quo" is so complicated that it almost lends itself to conflict. In the first place, there are five communities which share the privileges granted in reference to the Holy Places: these are the Latins, the Orthodox Greeks, the Orthodox Armenians, the Orthodox Copts and the Armenian Jacobites. Certain privileges are enjoyed by all five communities, in which case we find that sometimes a certain place is portioned off and a particular part of it is apportioned to each community, or the whole may be used by each community in turn, in a certain order and for a certain time. Other privileges are shared in a similar manner by only a certain number of these communities, while others are reserved specially to a single community. In this last claim the duty of the protecting Power must greatly overbalance the right, since the rivalries between the communities are often very bitter. The right of religious protection has played a most important part in the history of the Capitulations, and has considerably influenced the development of the privileges conferred by Capitulation, but the right itself has now lost the importance it had from the point of view of these privileges.

Before finally leaving this subject we should mention the position

[1] Young, vol. ii. p. 131.

[2] *Ibid.*, p. 132.

of the three great Protestant Powers, England, Germany and the United States, in reference to Protestants within the Ottoman Empire. During the early part of the nineteenth century, as a result of the efforts of English and American missionaries, there was a considerable movement, within the Armenian community, towards Protestantism; and, as a result of the intervention of the three Protestant Powers, the Porte, in 1847, recognised the Armenian Protestants as forming an independent community, and a wekil was appointed in 1850. A constitution was drafted in 1878 for the new community, but, as it was not acceptable to it, it has remained a dead letter. To this extent there has been a certain amount of Protestant intervention exercised by certain Powers. In 1841, also, the British and German Governments agreed to create a Protestant Bishopric at Jerusalem, the Bishop being consecrated in London, but nominated alternately by the British and German Governments. Although this arrangement came to an end in 1886, an English Bishop has continued to reside at Jerusalem, the Episcopalian Churches of Egypt being under his charge.

CHAPTER VIII

THE PRINCIPAL CHARACTERISTICS OF THE OTTOMAN CAPITULATIONS

THE history of the Capitulations, using the word in the strict sense, comes to an end at the commencement of the nineteenth century, by which time the United States of America and all the European States had been provided with Capitulations by the Ottoman Empire. It is natural, therefore, that, having reached this stage, we should consider the main characteristics of these documents. The origin of the word "Capitulation," we have found, was connected with the style usually followed in drafting these documents, and was derived from "caput" or "capitulum," referring to their division into heads or articles. The sense of the word is essentially different to the ordinary use of the word capitulation; in fact, the wording of the Capitulations shows that the Mohammedan rulers who granted them had in so doing no idea of submitting or surrendering to the European States. The position is clearly that of a powerful sovereign being entreated and, of his generosity, granting certain privileges, if not to an inferior, at least to an equal. Thus in the early Pisan Capitulations we read: "They begged that we would permit . . .;" "They prayed us . . .;" "They complained . . . we heard such complaints and ordained . . .;" "And having heard all their prayers . . ." The Pisans do not appear, from these examples, as dictating terms. The same principle appears in the preamble of the English Capitulation of 1580, where we find: "Wherefore according to our humanitie and gracious ingraffed disposition, the requests of her Majestie were accepted of us, and we have granted unto her Majestie this privilege . . ."

That there should be this assumption of superiority on the part of the Mohammedan rulers over the Christian monarchs was strictly in accordance with the principles of Mohammedan jurisprudence. The Sultans were the representatives of Islam, and they ought rightly to be the rulers of the whole world; the Christian princes were their natural enemies, whom they ought strictly to exterminate, but to whom, in their great magnanimity, they might extend a certain respite of peace. This is as clear in the later Capitulations, and

even in that of the French of 1740, as it is in the earlier: "I . . . who am the Sultan of glorious sultans; Emperor of powerful emperors; the distributer of the crowns of the Chosroes who are seated upon thrones, the shadow of God upon earth . . . the possessor of numberless cities and fortresses, to name which and to boast of the same is here needless; I who am the emperor, the asylum of justice and the King of kings, the centre of victory . . . I who by my power, the fount of happiness, am adorned with the title of Emperor of both lands, and by the crowning grandeur of my caliphate am graced by the title of sovereign of both seas." The English Capitulation is in similar terms: "We most sacred Musulmanlike Emperour . . . The prince of these present times, the only Monarch of this age, able to give sceptres to the potentates of the whole world, the shadow of the divine mercy and grace, the distributer of many kingdoms, provinces, townes, and cities. . . ." Nor are these solitary examples; but the same expressions occur in all the Capitulations, showing clearly the opinion of the Mohammedan ruler as to the relative position of himself and the Christian prince who desired his favour.

There is yet another example illustrating the same characteristic. The "Hedaya" says: "If the Imâm make peace with aliens in return for property, there is no scruple; because since peace may be lawfully made without any such gratification, it is also lawful in return for a gratification." But, "since peace is a desertion of war," and war is the primary duty, peace should only be made in this way when the Mohammedans stand in need of property. In other words, these Capitulations were not only grants of favour conceded by a powerful prince, but privileges which had to be bought, and paid for at a high price. Rey,[1] in speaking of the very considerable expenses which the ambassadors at Constantinople had to bear, says: "We must add a category of expenses, and that not the least burdensome, which all the foreign representatives had to pay: presents to the Turkish officials." According to the words of the Grand Vizier, the Capitulations had to be well weighted in case they blew away in the wind. In the account of Hareborne's arrival in Constantinople we find a list of the presents which he brought with him. "At our Ambassador's entring they followed that bare his presents, to say, twelve fine broad clothes, two pieces of fine holland, tenne pieces of plate double gilt, one case of

[1] Rey, p. 181.

candlesticks, the case whereof was very large, and three foot high and more, two very great cannes or pots, and one lesser, one basin and ewer, two poppinjayes of silver, the one with two heads: they were to drinke in: two bottles with chaines, three faire mastifs in coats of redde cloth, three spaniels, two bloodhounds, one common hunting hound, two grey hounds, two little dogges in coats of silke; one clocke valued at five hundred pounds sterling: over it was a forrest with trees of silver, among the which were deere chased with dogs, and men on horsebacke following, men drawing of water, others carrying mine oare on barrowes: on the top of the clocke stood a castle, and on the castle a mill. All these were of silver. And the clocke was round beset with jewels."[1] The presents are typically English; but England gave with no stinting hand, and gave of her best.

It was not only in the earlier Capitulations that these presents formed an essential part of the negotiations. In the American Consular Report, already quoted, we read that, "In the spring of 1786, Abd-er-Rahman, the Tripoline Ambassador at London, desired to negotiate with the Commissioners of the United States for a perpetual peace between them and Tripoli; 30,000 guineas for his employers and £3000 for himself were the lowest terms demanded."[2] In 1800 the Bashaw of Tripoli wrote to the President of the United States: "Our sincere friend, we could wish that these your expressions were followed by deeds and not empty words. . . . If only flattering words are meant, without performance, every one will act as he finds convenient." Thus, from one point of view or another, it is clear that in the mind of the Mohammedan ruler the Capitulations were grants of favour, conceded as an act of "beneficence."

The position of the Christian merchant, if these grants had not been made, would have been exceedingly precarious. His position as a result of these grants was that of a Musta'min and something more. As a Musta'min he was entitled to enter the Mohammedan territory in safety and trade there freely; he was entitled to worship in accordance with the rules of his own religion; and his property passed to his heirs by the rules of succession existing in his own state. But in addition to this he had rights which were not granted to Musta'min. The safe-conduct of the true Musta'min was precarious, and strictly

[1] Hakluyt, vol. v. p. 257.

[2] U.S.A. Consular Report, 1881, p. 6.

limited to a year or less; the privileges granted under the Capitulations were more secure, and practically unlimited. The Musta'min became a subject after one year's residence; the Christian merchant was entitled to reside in Mohammedan territory just as long as he pleased, and while resident there had the additional security of his funduk or quarter, and the protection of his consul. The Musta'min was subject to Mohammedan Law and the Mohammedan Courts; the Christian merchant was exempt from the jurisdiction of the ordinary courts of the country, and was governed by the law of his own state. The Musta'min must pay the poll-tax and the land-tax; but the Christian was exempt from all taxes except the customs dues, and even in the case of these he received special reductions. The daily life of the Musta'min was made burdensome by petty restrictions in regard to dress and conduct; the Christian merchant was in virtue of the Capitulations exempt from all these restrictions. The Capitulations were thus something more than the safe-conducts granted to Musta'min; in principle they were the same; but the necessities of the case, and the very great advantage which the presence of these merchants secured to the subjects of the land resulted in very considerable extensions being made in their favour.

All the Ottoman Capitulations, to whatever state they may have been granted, contained the same grants in so far as these privileges, just discussed, were concerned. The Capitulations were the same as far as these rights were concerned, the grant may have been stated in different words, but the rights themselves were the same for all. If any difference actually existed it was in connection with such questions as those of civil and religious protection, and in regard to purely commercial privileges. In fact, it becomes clear that the later Ottoman Capitulations contained two distinct parts: the first part, similar to the original Capitulations and practically the same throughout their history, granting the privileges of the Musta'min; the second part, variable and developing as the years advanced, and consisting of purely commercial privileges. These later Capitulations were thus partly grants to Musta'min and partly commercial conventions. Later still these two parts came to be separated; the first part was definitely consecrated by Treaty, the second was drafted into, and extended by, ordinary Commercial Conventions. When we come to analyse each separate privilege or immunity we shall find that, although these are essentially the same, there are certain differ-

ences in detail. But here again we may say that this difference is immaterial, because, in virtue of "the most favoured nation clause," each state was entitled to benefit by these privileges down to the smallest detail. It is claimed that the first appearance of this clause was in the French Capitulation of 1673; but the principle of it is clearly noticeable in several of the older Capitulations. Thus in the Capitulation of Kaït Bey we find: Article 26, "That no one shall dare to commit the least insult to the Florentine ships . . . according to the usage and privilege of the Venetians;" or Article 27, "That the Florentine consuls and merchants shall have a determinate site for their dwelling place in Alexandria . . . as have the other European nations." This is more fully developed and stated in general, instead of special, terms in the English Capitulation of 1580: "And that as we had graunted unto other Princes our confederates, priviledges, and Imperiall decrees, concerning our most inviolable league with them, so it would please our Imperial Majesty to graunt and confirme the like priviledges, and princely decrees to the aforesaid Queene." The 33rd article of the French Capitulation of 1740 is very similar: "Que les privilèges et les honneurs pratiqués envers les autres nations franques aient aussi lieu à l'égard des sujets de l'empereur de France." Since that time the clause has become one of style in all treaties made between European States and Turkey.

It is generally considered that the Capitulations were unilateral grants and not bilateral treaties creating reciprocal obligations. Undoubtedly the original grant of a safe-conduct to a Musta'min was essentially unilateral; but, in the first place, it was possible that a Mohammedan might require and might be given a similar grant when in the territory of the Dar-el-Harb. The treaty between the Saracen prince and the King of Sicily in 1230 is an example of this. In like manner the negotiations between Elizabeth and the Sultan in 1579 show that the latter wished to receive similar privileges for his subjects in England. These two grants would, as a rule, be contained in separate documents, but they are also to be found in the same document; thus the Venetian Capitulation of 1454, Article 2, stipulates: "Il sera loisible aux marchands des deux nations de fréquenter les deux états, d'aller venir et trafiquer librement par terre et par mer sans qu'aucun obstacle puisse leur être opposé;" or in Article 7, "Les marchands turcs qui feront le trafic dans les dépendances vénitiennes seront soumis à la même loi." In the second place, we

find that after the grant has been made certain special counter stipulations are made, as was the case of the Pisans in the time of Saladin: "In consideration of all which things they did promise us and did agree that . . ." The question is at best a purely historical one, as this part of the Capitulations has now been adopted and included in modern treaties, which are undoubtedly bilateral and unquestionably impose reciprocal obligations on the parties.

Another question of a similar nature is connected with the statement that these grants of privileges were only valid during the life of the grantor, and were not binding upon his successors. This characteristic accounts for the necessity for the repeated renewals which we have already called attention to; thus we have seen that between 1580 and 1675 the English Capitulations were renewed by each successive Sultan, with one unimportant exception. The safe-conduct granted to the Musta'min was undoubtedly temporal in its nature, and depended for its continuance on the will of the Imâm who granted it; and, further, the strict law would not sanction more than a transient peace. The position of fact resulting from the continual presence of their consuls, and the security of their funduks, must, however, have materially altered the position of these Christian merchants, and given a certain permanence to their privileges. But, in spite of this, it may well have been felt that it was better to strengthen this position of fact by one of right, acquired in virtue of a fresh grant from the new ruler. Even the later treaties of the Turkish Empire bear traces of the Mohammedan rule, that a temporary truce was the most that could be granted: thus the Treaty of Carlowitz, 1699, Article 20, and the Treaty of Passarowitz, 1718, Article 20, both contain a clause limiting the effects of the treaty to a period of twenty-four or twenty-five years. Even if the law were strictly interpreted the Christian merchant would, at worst, become a Musta'min, but a Musta'min with a consul and a funduk. They would undoubtedly be submitted to that petty persecution at the hands of the officials which was the cause of the majority of the articles of the earlier Capitulations; but, apart from this, their actual position would not be very greatly changed. The French Capitulation of 1740 is the first in which a Sultan stipulates in the name of his successors as well as of his own. As the privileges of the Capitulations have now been consecrated by modern treaties they

are essentially permanent and binding on both the grantors and their successors.

It is in virtue of the fourth article of the Treaty of the Dardanelles, entered into between Great Britain and the Sublime Porte, on the 5th January 1809, that the privileges of the Capitulations have been definitely consecrated, and are now binding on the present Sultan and his successors. The terms of the Treaty are: "The Treaty of Capitulations agreed upon in the Turkish year 1086 (A.D. 1675), in the middle of the month Gammaziel Akir, as also the Act relating to the commerce of the Black Sea, and the other privileges (Imtiazat) equally established by Acts at subsequent periods, shall continue to be observed and maintained as if they had suffered no interruption."[1]

[1] Hertslet, vol. ii. p. 370.

CHAPTER IX

THE TANZIMAT, OR REFORM IN TURKEY

THE next phase of the history of the Capitulations is intimately connected with what is known as the Tanzimat. "Tanzym" is the Arabic for organisation, and is derived from the verb "nazam," to arrange. Tanzimat, as we are about to use it, is generally employed to describe the collection of those laws, regulations and reforms which were introduced in Turkey during the nineteenth century, with the object of reorganising her law and institutions on a basis which would be more in accordance with that already established in European States. The Tanzimat was the result of the intervention of the European Powers in the internal affairs of Turkey; and was largely brought about by the fear entertained by the Turkish rulers that, if they did not conform to the wishes of the Powers, her European territory might be absorbed by one or other of her powerful neighbours. The first step toward this intervention, by a European State in the internal affairs of Turkey, was initiated by Louis XIV., and has been discussed in connection with the history of the French claims to Protection and the Capitulations of 1673 and 1740. This had been followed by the invasions of Austria and Russia in 1736; and from that date onwards the intervention of Europe in Turkish affairs had become a general practice. The interest of Europe in Turkey ceased to be purely commercial, and became exclusively political; although the intervention itself was disguised under the pleas of religion and commerce. To understand the full application of the expression Tanzimat it will be necessary to consider certain aspects of the Mohammedan Law.

The chief characteristic of Mohammedan Law is that it is considered to be of divine origin. The chief source of this law is the Koran, which is a collection of Sura; these Sura[1] being divine

[1] "Confining our attention . . . to the Sura delivered . . . at Medina, we find their number to be at most twenty-seven out of a total of 114, making up in actual bulk between a third and a fourth of the whole. Even of these,

revelations of the law made to Mohammed when under the inspired influence of God. These revelations were made public by Mohammed when occasion arose, and were preserved either in consequence of having been immediately written down by secretaries on skins or leaves, or by being committed to memory by the audience. After Mohammed's death it was felt that there must be a more permanent means of preserving this law than that in existence; his successor, Abu Bakr, therefore ordered all the existing Sura to be collected and compiled in a single volume. Certain unauthorised editions of this collection were later published, but these were all destroyed by the Khalif Othman, who ordered the transcription of a certain number of authorised versions of the collection to be made, all other copies in the future being forbidden.

Experience soon showed, however, that the Koran was not sufficient to meet all the legal difficulties which might arise. There were certain problems which could not be solved by a direct application of the rules contained in the Koran. To meet this difficulty it was allowed that the evidence of the "Companions of the Prophet" might be taken as to the Hadith or sayings of the Prophet on similar questions, or as to the Sunna or custom of the Prophet under similar circumstances. This second source of law was called the Tradition, Hadith, or Sunna. For some time these were the only sources of the Law, but on the dying out of the generation of the Prophet's contemporaries, which coincided with the death of the Khalif Ali, an increased demand for law was felt. The centre of government had been transferred from Medina to Damascus, and its jurisdiction included millions of Greek and Persian converts, as well as many unbelievers, all of whom were accustomed to institutions widely different from those familiar to the Prophet; an increase in the quantity of Divine Law became essential, and as a result a class of professional interpreters of the Sharia, or Divine Law, came into

most are entirely, and all chiefly, occupied with non-legal matter, hortatory, theological, or merely personal; but it is possible to cull from different chapters some eighty or ninety verses, constituting about one-fiftieth of the entire Koran, which lay down something like a general rule on matters which might come before a civil or criminal court of justice. Even these are very largely open to the observation that the sanction put in the foreground is the religious one. The passages which convey a distinct intimation that it is the duty of Moslems to visit offenders against the rule in question with temporal penalties are very few indeed."—"An Introduction to the Study of Anglo-Muhammadan Law," by Sir R. K. Wilson, London, 1894, pp. 15, 16.

existence, whose position was similar to that of the jurisprudentes of Rome. The duty of these professional lawyers was to give responses or fetwas either to private persons seeking advice, or to the kadi or judge wishing to give a decision, or even to the Khalif himself. This class of persons devoted to the study of the Sharia was collectively called the Ulema.

The division of the Mohammedan religion into orthodox and heterodox began under the Khalif Ali, husband of the Prophet's daughter Fatima. When Abu Hanefa separated from his teacher, Jaafar-es-Sadik, the dissensions which arose between these two eminent lawyers offered a doctrinal basis for the differences of view between their followers. Racial differences also accentuated the division, the Persians being Shiahs or heterodox, the Arabs Sunnis and orthodox. The wars between the Persian kings and the Sultan of Turkey, who had become the Imâm of the orthodox, rendered all chance of future fusion impossible. Then the orthodox themselves soon divided into four schools: Hanefites, Malekites, Shafeites, and Hanbalites. The last were the followers of Ibn Hanbal, and seem to be celebrated rather for their fanaticism than for adherence to any special doctrine. Of the other schools, the Hanefites were the followers of Abu Hanefa, who was originally a pupil of the great Shia lawyer, Jaafar-es-Sadik; their distinguishing principle was that, if a question arose which could not be solved by the direct application of the Koran, a solution should be discovered by "analogical reasoning" (Kiass);[1] this the jurisprudentes did by extracting from a passage in the Koran some meaning which the passage would not have at first sight appeared to convey. The Malekites were the followers of Malik Ibn Anas, who was himself a pupil of the last survivor of the "Companions of the Prophet;" a fact which helps to account for the principal doctrine of the sect, which was that the Sunna, or Traditions, were to be considered as the chief means of solution in case of difficulty. Shafei, the founder of the Shafeite sect, was a pupil of Malik, and his followers naturally held the Traditions in high respect, but they appear to have shown

[1] Wilson, pp. 30, 31, gives examples of these Kiass thus: "It having been declared in the Koran that 'the maintenance of a woman who suckles an infant rests upon him to whom the infant is born,' the Hanafi lawyers infer *à fortiori* that the maintenance of the infant itself is incumbent on the father." The "Hedaya" offers many examples of this process, which is called igtihad, or the effort of legislation.

more discrimination in their choice. As a result of the labours of the Malekites there has been a large accumulation of these traditional laws.[1]

Mohammedan Law, being of divine origin, is unchangeable; the lawgiver was God, and there is no human legislature competent to amend or complete the law, so that it may meet the altered conditions of a developed civilisation. The law is contained in a code which cannot be altered; and law and religion are so inseparably blended that the law must remain unalterable so long as the religion exists. To the true believer there is only one binding law, and that is the Sharia; this law is absolutely unchangeable, although it may frequently require interpretation. This Sharia is contained in the Koran, the Sunna, the Kiass, and the Ijma, *i.e.*, the decisions accepted by the assemblies of the Ulemas, the jurisprudentes of Mohammedan Law. This law is to be found in the authorised copies of the Koran, and the collections and writings of the Ulema. When an author finds that the Koran in its simple sense fails to give a solution to the problem on which he is engaged, he interprets some phrase or passage in the Koran in such a way as to give the required answer; or he may find an answer in the Sunna. A special science has also been developed for establishing the authenticity of these Sunna, and for determining their relative value. Step by step the chain of evidence is traced backwards until the rule can be connected with some act or saying, or even with the silence, of Mohammed, as testified by some eye-witness, such as one of the "Companions of the Prophet."

From the purely legal point of view it is abundantly clear that this system of law is entirely unsuited to the requirements of modern civilisation. Mohammedan Law, as it existed in the time of Mohammed, and for some centuries after, may have been quite sufficient for the needs of the people for whom it was originally intended; and it is probable that it was a considerable advance upon the law at that time existing among neighbouring peoples. It is also true that the Mohammedan Law contains many rules which are of the very greatest value as Moral Law. But as a working legal system, to be applied to the business and commercial life of a modern state, it is

[1] For an account of the different Orthodox schools see Wilson, pp. 29 to 44; and of the Heterodox, pp. 52 to 71; and also in the Introduction to Hamilton's Hedaya, pp. xxi. to xxiv., small edition.

absolutely inadequate. A legal system which does not admit of any amendment, and which cannot be changed to meet the requirements of an ever developing civilisation, is valueless, especially from the commercial point of view. And a state cannot continue to exist within Europe which has, as the fundamental axiom of its law, the principle that the law is unchangeable. The truth of this became apparent during the first years of the nineteenth century, and a modification in the axiom of unchangeableness had to be admitted. We have seen how "perpetual war against the infidel" was the fundamental principle of the Mohammedan doctrine, but we have also seen how Mohammed himself found it necessary to modify this rule and admit exceptions. So in more modern times the principle of "the immutability of Mohammedan law" has been found to be impossible, and certain exceptions have been admitted in these "more degenerate times." The existence of another system of law is now admitted side by side with the Sharia; this law is the Kanoun, and consists of those laws which have been made by the temporal sovereign. But as the "Truce," which for a time suspended the continuance of perpetual war, was essentially a temporary and opportunist policy, which was to be broken when circumstances became more propitious, so also with the Kanoun; at present circumstances may be too strong for the followers of the Prophet, and the unbeliever may be, for a time, so powerful that he is able to force his legal system upon the Faithful; yet this law is but a part of the Kanoun which will be swept away as soon as those adverse circumstances cease, and then the Sharia will once more become the only law; for the Sharia never changes, but exists for all time.

We may, in consequence, say that in a modern Mohammedan State there are two legislators: one Mohammed the original lawgiver, and the other the temporal ruler. The laws of Mohammed are the only true laws, and they alone can be enforced by the Mohammedan Courts, the Mehkemahs. The Sultan of Turkey, as representative of Mohammed, has a certain legislative capacity, but laws thus made must, to have force among believers, be proved to be in accordance with the fundamental principles of Mohammedan Law; in order to give this guarantee, and to make them binding on Mohammedans, they must be certified by the fetwa of the Ulemas or Muftis as being strictly in accordance with the

law of Mohammed. But the pressure of European influence has forced the Sultan one step further, and he has, merely as a temporal ruler and not as the representative of the Prophet, promulgated other laws which could not, even by the most habile jurist, be certified as being in accordance with the law of Mohammed. This last form of law is the Kanoun. The Sultan, in making this law, was acting beyond his powers, as understood by Mohammedans; but circumstances were too strong for the Faithful, since, if Turkey was to continue to exist, very considerable reforms in the law and the administration required to be made; the true believers look forward to a time when circumstances will once more change and European pressure will cease. Since this new law was not in accordance with the Sharia, its execution could not be entrusted to the Mehkemahs, as the Kadis, or judges of these courts, could not recognise these rules as law; it was necessary, therefore, not only to make new laws, but to institute new courts; and councils or Medjilises were instituted in different parts of the country, and entrusted with the execution of this new law. Nor could reform stop here; if the new law and the new courts were to be a success the whole Mohammedan system of administration required to be changed. The Tanzimat is the totality of the laws and institutions which were introduced with the intention of bringing about these changes in the law and the administration.

The chief fault in the Tanzimat in Turkey was that the reforms projected were introduced with too much haste. The East is essentially conservative, and the Mohammedan religion tends to intensify this conservatism; the great mistake was in not taking the religious prejudices of the people into consideration. Reforms, when they affect the social life of a people, should be introduced gradually, and should never be of such an extensive character that it is entirely beyond the powers of the people to assimilate them. When one form of civilisation is to be substituted for another the people themselves must be educated up to the point at which it becomes possible for them to receive the new civilisation. This was the mistake made by the Sultans; but the Sultans were not the only parties to be blamed. The European Powers were at fault. They did not take the trouble to consider what was really best in the true interests of Turkey; or if they did consider this, their own political rivalries drove them on to act contrary to their better instincts. Chance or

fortune was often against the Sultans. The fall of the Janissaries was carefully planned, but chance led to their destruction before the country was prepared for it. The rebellion of Mohammed Aly was another circumstance which, by lessening the prestige of the Sultan, led to the failure of his plans. And again, the apparent success of Mohammed Aly, in the attraction of European interests towards Egypt, encouraged the Sultan to hurry forward his reforms. But Mohammed Aly's success was more apparent than real, since his reforms suffered from the same defect of haste. For one reason or another the reform expected from the Tanzimat did not come, or if the desired effect was achieved for a time it soon passed.

The Tanzimat[1] was initiated by Sultan Mahmoud II., and the first scene was the destruction of the Janissaries on 15th June 1826.[2]

[1] A full history of the Tanzimat is given by Engelhardt, "La Turquie et le Tanzimat," Paris, 1882, 2 vols.

[2] The corps of the Janissaries was originally formed in the reign of the Sultan Orchan, 1326 to 1359; an account of its institution is given by Creasy ("History of the Ottoman Turks," vol. i. pp. 21-24). "Tschendereli laid before his master and the vizier a project, out of which arose the renowned corps of the Janissaries, so long the scourge of Christendom; so long, also, the terror of their own sovereigns; and which was finally extirpated by the Sultan himself, in our own age. Tshendereli proposed to Orchan to create an army entirely composed of Christian children, who should be forced to adopt the Mohammedan religion. Black Khalil argued thus: 'The conquered are the property of the conqueror, who is the lawful master of them, of their lands, of their goods, of their wives, and of their children. We have a right to do what we will with our own; and the treatment which I propose is not only lawful, but benevolent. By enforcing the conversion of these captive children to the true faith, and enrolling them in the ranks of the army of the true believers, we consult both their temporal and eternal interests; for, is it not written in the Koran that all children are, at their birth, naturally disposed to Islamism?' He also alleged that the formation of a Mahometan army out of Christian children would induce other Christians to adopt the creed of the Prophet; so that the new force would be recruited, not only out of the children of the conquered nations, but out of a crowd of their Christian friends and relations, who would come as volunteers to join the Ottoman ranks.

"Acting on this advice, Orchan selected out of the Christians whom he had conquered a thousand of the finest boys. In the next year a thousand more were taken; and this annual enrolment of a thousand Christian children was continued for three centuries, until the reign of Sultan Mahomet IV., in 1648. When the prisoners made in the campaign of the year did not supply a thousand serviceable boys, the number was completed by a levy on the families of the Christian subjects of the Sultan. This was changed in the time of Mahomet IV., and the corps was thenceforth recruited from among the children of Janissaries and native Turks; but during the conquering period of the Ottoman power the institution of the Janissaries, as designed by Alaeddin and Tshendereli, was maintained in full vigour.

This corps of mercenaries had acquired considerable power in the state. It seemed to the Sultan that his schemes of reform could only be carried through if he were actually the supreme power in the state; this powerful body was in consequence an obstacle to the realisation of reform. A Hatti Sherif was drawn up on 28th May, after the acceptance and approval of the Ulemas, in virtue of which a new corps, commanded by Turkish officers trained abroad, was to be instituted. This was to be the first step towards the overthrow of the Janissaries; but the Janissaries, hearing of the proposal, started an insurrection, and as a result the corps was disbanded; some 7000 Janissaries being killed and 15,000 exiled. Thus, at the outset, Mahmoud met with misfortune. The Janissaries had been got rid of certainly, but before the country was provided with an army to take their place. Turkey was defenceless; and as the Janissaries were intimately connected with the whole system of government, a new organisation of practically the whole administration was necessary. Turkey was not prepared for any such sudden change as this. The Sultan communicated a whole series of reforms affecting the army, the police, various parts of the administration, but especially

"The name of Yeni Tscheri, which means 'new troops,' and which European writers have turned into Janissaries, was given to Orchan's young corps by the Dervish Hadji Beytarch. . . .

"The Christian children, who were to be trained as Janissaries, were usually chosen at a tender age. They were torn from their parents, trained to renounce the faith in which they were born and baptised, and to profess the creed of Mahomet. They were then carefully educated for a soldier's life. The discipline to which they were subjected was severe. They were taught the most implicit obedience; and they were accustomed to bear without repining fatigue, pain and hunger. But liberal honours and prompt promotion were the sure rewards of docility and courage. Cut off from all ties of country, kith and kin, but with high pay and privileges, with ample opportunities for military advancement, and for the gratification of the violent, the sensual and the sordid passions of their animal natures amid the customary atrocities of successful warfare, this military brotherhood grew up to be the strongest and fiercest instrument of imperial ambition, which remorseless fanaticism, prompted by the most subtle statecraft, ever devised upon earth.

". . . Von Hammer calculates, from the increase in the number of these troops under later Sultans, that at least half a million of young Christians must have been then made, first, the helpless victims, and then the cruel ministers of Mahometan power."

The history of the Ottoman conquests in Europe, Asia and Egypt is the history of the warlike exploits of this great military corps. Among the most important of their political actions against their own Sultans are their revolt against Amurath IV., 1623 to 1640, described by Creasy, vol. i. ch. xiii., and by Von Hammer, bk. 46 *et seq.*

the Treasury and the methods of taxation. The people were, however, mistrustful, fearing that these reforms were directed against their religion. The Ulemas were at first suspicious, but soon, owing to the want of tact of the Sultan, became actively hostile. The Grand Mufti remonstrated, but was told that his duty was entirely confined to the exercise of religion, and that he had no right to interfere in the direction of the state. On the top of this came the events which led to the battle of Navarino—the Protocol of London, and the Treaty of Adrianople, 14th September 1829—events which were immediately followed by the successes of Mohammed Aly in Syria. The Powers had to be called in to suppress the rebel, but their intervention led to the practical separation of Egypt from Turkey. Mahmoud's schemes had failed in every respect, and the only lasting events of any importance were the signing of Commercial Treaties with England, France, and Austria in 1838, and the promulgation of Quarantine Regulations. These Commercial Treaties mark the definite separation of the two divisions of the Capitulations; henceforward the commercial concessions and privileges were absolutely distinct from the Capitulations proper. The signing of the Quarantine Regulations is of interest, as these regulations are strictly opposed to the doctrines of Islam.

The commencement of the reign of the Sultan Abdul Medjid was marked by the promulgation of one of the most important acts of the Tanzimat. On 3rd November 1839, in the midst of great splendour, the Sultan, surrounded by his officers of state, ministers and Ulemas, as well as the representatives of the different religious communities and the foreign ambassadors, paraded beside the Mosque of Gulhana, and there, in the presence of this distinguished assembly, was read the Hatti Sherif of Gulhana.[1] In this Hatti Sherif the Sultan promised to introduce new laws, the principal objects of reform being connected with the three following points:—"1. Guarantees insuring complete security to our subjects, both in regard to their life, their honour and their property; 2. A regular mode of assessing and collecting the taxes; 3. An equally regular method for the enlistment of the army and the duration of service." The powers of the government were in no way altered, but the laws which were to be introduced were to apply to all subjects of the Sultan alike, whether

[1] Noradounghian, vol. ii.; Schopoff, p. 5.

they might be Mohammedans or Rayah. "These imperial concessions are to be extended to all our subjects, to whatsoever religion or sect they may belong, they shall enjoy them without exception. Thus there has been granted by us to all the inhabitants of the Empire perfect security in respect to their life, honour and property, as the sacred texts of our law require." This clause was the most important of the whole document, but such an equality between Rayah and Mohammedan was so opposed to the spirit of Islam that any attempt to carry it out to the letter would, at that time, have been doomed to failure, owing to the religious fanaticism of the Mohammedans. The whole Hatti Sherif was primarily intended as a means of obtaining a share in the good favour of Europe, which had apparently been extended to Egypt.

The position in Turkey had, at this time, much that resembled the social position in Rome during the Regal period and at the commencement of the Republic. The policy followed by Mohammed II. on the capture of Constantinople, in allowing the Jews and Christians to retain their own administration and social and religious organisation, was undoubtedly a sound policy at a time when his power was not yet securely fixed, and when he had little leisure to develop his government. But with the passage of time the two great divisions of the Ottoman Empire did not come any closer together, but remained absolutely apart. In fact there was a division of the state into two distinct classes similar to the division into Patricians and Plebeians in Rome. The first, the Mohammedans, similar to the Patricians, the ruling class having a monopoly of the civil, legal and administrative rights, and free from the burden of taxation; the second, the Rayahs, in a subordinate position similar to the Plebeians, not allowed to hold any government office, not eligible for service in the army, worried by petty regulations in respect of their dress and daily habits, but withal heavily taxed and persecuted. And to the jealousy of the Patrician we must add the religious fanaticism and intolerance of the Mohammedan. The Hatti Sherif Gulhana promised to do away with this state of inequality; but the history of Rome should have taught Europe that such barriers as these cannot be thrown down by a single enactment and without any previous preparation.

Attempts were made to fulfil the promises given in the Hatti Sherif. The Council of State was reorganised; changes were made in the method of collecting taxes; a penal code was drafted, but did

not prove effective; a Frenchman was appointed to prepare a Civil Code, but the scheme had to be dropped. Turkey was not ready for reform; the fanaticism of the people, distrust in the anti-Mohammedan character of the reforms, fear of further European intervention, and financial embarrassment, were all influences opposed to reform. Reaction followed, assisted perhaps by jealousy between the Powers themselves, increased by the preponderance of the French influence. The Sultan had to confess that Turkey was not yet ready for reform. But in spite of this check the new principle of equality between the two divisions of the people received two important acts of confirmation. Riza Pasha in 1843, addressing certain of the Christian communities, said: "Mohammedans, Christians, Jews, you are all the subjects of one emperor, the children of one father. If there are any among you who are oppressed, let them show themselves, it being the steadfast intention of His Majesty that the laws which secure the life, honour and property of all subjects shall be strictly observed in his Empire."[1] And similarly, Raschid Pasha, who was minister in 1846, addressed the non-Mohammedan communities at Adrianople in these terms: "His Majesty the Emperor, as he desires the good fortune of his Mohammedan subjects, also wishes that the Christians and Jews, who are equally his subjects, may enjoy peace and protection. The difference in religion and sect only concerns themselves; it does not interfere with their rights."[2]

In spite of opposition the army was remodelled in 1843 after the French system; reform of the financial system of the state was recommenced; Mixed Courts were organised in 1847, and important changes were introduced into the procedure of these courts. In Mohammedan Law written evidence is not recognised as in European legal systems, hence several of the special rules in the Capitulations as to the bindingness of a contract for which there was written evidence; this principle was adopted in the new courts, and the right of a Christian to give evidence against a Mohammedan was admitted. These Mixed Courts were nominally commercial courts, but their powers also extended to certain civil cases. This was followed in 1850 by the promulgation of a Commercial Code based on the model of the French Commercial Code. And then in 1852 a Firman was promulgated reorganising the Provincial Administration. With this Firman ended the first stage in the history of the

[1] Engelhardt, vol. i. p. 69. [2] *Ibid.*, vol. i. p. 81.

Tanzimat, which was now suspended by the Crimean War. In spite of failures, a certain advance had been made; many reforms had been abandoned; the Rayah and Moslem were still widely separated, and the Rayah still occupied a subordinate position; but reforms had been attempted, and the minds of Mohammedans prepared somewhat more for reform in the future. But, above all, Mixed Commercial Courts had been established and were doing good work in many of the principal towns of the empire.

The second stage in the history of the Tanzimat in Turkey commences, after the conclusion of the Crimean War, with the Treaty of Paris of 1856. One of the principal objects of the Tanzimat had been the recognition of the principle of equality between Mohammedan and Christian subjects. The Hatti Sherif of 1839 had accepted this principle, and had promised reforms which should bring about its realisation; but these reforms had not yet been carried into effect. The Powers who had assisted Turkey in the war now asked for the fulfilment of her promises made at Gulhana. The Protocol of Vienna which was signed on 1st February 1855, and which was to serve as the basis of peace negotiations, contained four propositions, the last of these, and the one which was to cause most discussion, referred to the immunities of the Christian population in Turkey. The clause as finally accepted was: "That all faiths be, and shall be in the future, freely practised in Turkey, nor shall any Ottoman subject be disturbed or molested in the exercise of his religion, nor can he be forced to change it." Before the question was raised at Paris, the Sultan, on 9th May 1855, granted certain concessions to his Christian and Jewish subjects. The Rayah was to be admitted into the army and to the administration, and should be eligible for any military command up to the rank of colonel, or to a civil office up to the first class; and, further, that they might repair their churches without any special authorisation, and even construct new ones in the quarters which had been set apart for their exclusive use. This reform, however, met with opposition from all classes; and the opposition from the Christians, especially of the Orthodox Church, was so bitter that they threatened to emigrate *en masse:* so that the clause in reference to military service had eventually to be withdrawn.

Difficulties arose in Paris as to the nature which the reform to be issued should take. England claimed that these reforms should be in the nature of a treaty, with reciprocal rights and duties, to be

entered into between Turkey and the Powers. Turkey would not admit this, and in order to give the character of spontaneity to the new reform the Ottoman Government forthwith promulgated a new charter called the Hatti Humayoun.[1] The new charter was read on 18th February 1856, with formalities equal to the ceremonies which had attended the reading of the Hatti Sherif of Gulhana, and in the presence of the officers of state, ambassadors and representatives of the Mohammedan, Christian and Jewish communities. The Hatti Humayoun contains thirty-eight articles. The first article renews the guarantees promised to all subjects, without distinction of religion, by the Hatti Sherif of Gulhana and by the laws of the Tanzimat in regard to security of the person, honour and property; and official measures are to be taken to insure that these receive full effect. Other articles confirm the immunities and spiritual privileges which had already been granted by former Sultans to the non-Mohammedan communities. The powers granted by Mohammed II. to the Patriarchs and Bishops are to be renewed in such a way as to harmonise with the changes which had taken place since the original grant. The temporal affairs of each community are to be placed under the control of a council to be chosen from the members of such community, both the clergy and laity being represented; each community having the right to establish schools of all grades which will be placed under the inspection of a mixed council of education. The building of churches and schools, and their maintenance, are also provided for; and certain articles repeat specifically the absolute freedom of religion, and the equality which is to exist between all subjects of whatsoever religion. "Personne ne sera ni vexé, ni inquiété à cet égard." "Personne ne sera contraint à changer de culte ou de religion." All idea of the inferiority of the Rayah, in respect to the Mohammedan, is to be done away with. "Tout mot et toute expression ou appellation tendant à rendre un classe de mes sujets inférieure à l'autre, à raison du culte, de la langue ou de la race, sont à jamais abolis et effacés du protocole administratif."

All departments of the administration are to be reformed, the principle of equality between Rayah and Mohammedan being maintained. Thus, all government appointments are to be made by the Sultan himself, and all subjects are to be eligible for these appoint-

[1] Aristarki Bey, vol. ii. p. 23. Noradounghian, vol. iii. pp. 83, &c. Schopoff, pp. 48, &c.

ments: "et comme tous nos sujets, sans distinction de nationalité, seront admissibles aux emplois et services publics, ils seront aptes à les occuper, selon leur capacité, et conformément à des règles dont l'application sera générale." Equality of taxation is to be introduced, and the method of collecting the taxes is to be reformed. Non-Mohammedans are to be liable for military service. The provincial government is to be reorganised, and non-Mohammedans are to receive equal representation. The Finances are to be reformed, banks are to be instituted, and the laws in regard to corruption and embezzlement are to be strictly enforced. The Judicial system is also to be reformed. Cases between Rayah and Mohammedan are to be heard in Mixed Courts, the witnesses being sworn according to their faith, and the audiences being public. Other cases, which depend on the religious law, and the parties to which are either both Mohammedan, or both of the same non-Mohammedan community, are to be brought before the religious courts of the Mohammedans or non-Mohammedans, and the law applied is to be either the Sharia, or the law of the Religious Community interested, as the case may be; and disputes in regard to successions between Rayah may, on their request, be heard by the heads of their community. Penal and Commercial Codes, as well as a Code of Procedure, are to be promulgated. The Prisons are to be completely reformed, "et tout traitement qui ressemblerait aux tourments et à la torture sont radicalement supprimés et abolis." The system of Police is also to be fully reorganised. The promised reform was thus complete and included every important branch of the administration.

One article of the Hatti Humayoun is of special interest, as by it foreigners were to be allowed the right to own immovable property in the Ottoman Empire. The question is, however, one which requires special discussion.[1]

Within a week of the promulgation of the Hatti Humayoun the Powers met at the Congress of Paris, and after considerable discussion it was duly recognised, and the Powers undertook in the future that the European Powers should not intervene, either singly or collectively, in the internal affairs of Turkey. "Leurs Majestés s'engagent chacune de son côté, à respecter l'indépendance et l'intégrité territoriale de l'Empire Ottoman, garantissent en commun la stricte observation de cet engagement, et considéreront, en conséquence,

[1] See chapter xi. "The Land Laws of Turkey and Egypt."

tout acte de nature à y porter atteinte comme une question d'intérêt général." And, "S. M. I. le Sultan, dans sa constante sollicitude pour le bien-être de ses sujets, ayant octroyé un Firman qui, en améliorant leur sort sans distinction de religion ni de race, consacre ses généreuses intentions envers les populations chrétiennes de son empire, et voulant donner un nouveau témoignage de ses sentiments à cet égard, a résolu de communiquer aux Puissances contractantes ledit Firman, spontanément émané de sa volonté souveraine.

"Les Puissances contractantes constatent la haute valeur de cette communication. Il est bien entendu qu'elle ne saurait, en aucun cas, donner le droit aux dites Puissances de s'immiscer, soit collectivement, soit séparément, dans les rapports de S. M. le Sultan avec ses sujets, ni dans l'administration interieure de son Empire."

In fulfilment of the promises made in the Hatti Humayoun there appeared in 1860 an "Ordinance in regard to the competence and organisation of the Commercial Courts"; in 1861 a Code of Commercial Procedure was promulgated; and in 1864 there followed a Code of Maritime Commerce, and a Code of Criminal Procedure. Between 1868 and 1876 the Civil Law, as contained in the works of the Hanafite authors, was codified, and published under the title Medjellé. In 1864 the administration of the Vilayets was reorganised by Firman, both Mohammedan and non-Mohammedan citizens being represented on the elective councils and the tribunals; and in 1874 a provincial division similar to a commune was formed, having a council half Mohammedan and half non-Mohammedan, for the collection of taxes. In accordance with the Firman of 1864 the provinces were divided into divisions similar to the French arrondissement, canton and commune, under the orders of the Vali or Governor, with subordinate officials over each division and subdivision. In each division was a council and a court, the majority of whose members were elective, the right of election being theoretically shared equally by Mohammedans and non-Mohammedans, but in reality this equality did not exist. The civil and criminal courts were always presided over by a Ulema, but not the commercial courts.

The different non-Mohammedan religious communities received new Constitutions,[1] in virtue of the promises made. Thus, the Greek Community received a Constitution in 1862, the Armenian United

[1] See more fully for these Constitutions in the chapter "Courts of Personal Statute and Religious Communities."

in 1863, and the Jews in 1865. We may take the Constitution of the Greek Community as an example. Several clauses refer to the mode of election and to the powers of the Patriarch, the Synod, the different councils, the bishops, courts, schools, financial administration, &c. The Patriarch is to be elected for life, his election being confirmed by the Porte; and he is to have the power of treating directly with the Ottoman Government. The Holy Synod is to consist of twelve metropolitans or bishops, half of whom are to be re-elected each year: their duties refer to questions of faith and ecclesiastical discipline. The National Council, consisting of twelve lay members, is to look after the temporal affairs of the community, and exercise judicial and deliberative powers; as a judicial body it formed a kind of court of appeal. Lastly, the General Assembly consisted of members chosen from the Synod and the National Council, as well as a certain number of members chosen from the professional and commercial bodies of the community. The duties of the General Assembly were to consider all important questions which were of interest to the community.

CHAPTER X

THE OTTOMAN LAWS OF PROTECTION AND NATIONALITY

One of the most interesting problems which arose out of the intervention by European States in the internal affairs of Turkey, during the period of the Tanzimat, was how to check the denationalisation of her subjects. At first the evil took the form of a right called Protection. In virtue of this right of Protection a Foreign State could withdraw a Turkish subject from the jurisdiction of the local authorities, and place him in a position which entitled him to benefit from the privileges and immunities which had been granted to foreigners by the Capitulations of the Ottoman Sultans. To prevent this abuse a Law of Protection was passed in 1863; but although the abuse then ceased, it was succeeded by an even greater. The Foreign States, instead of granting protection, conferred the title of subject on large numbers of Ottoman subjects who had never quitted Ottoman territories, and therefore could not have fulfilled the most essential condition of naturalisation, in virtue of which it is necessary for the foreigner to reside, during a considerable period of time, within the territories of the state of which he wishes to become a subject. This second abuse was dealt with by the Ottoman Law of Nationality of 1869.

The right of Protection was no new principle, but is one which can be traced back to the earliest Capitulations, whether Christian or Mohammedan; thus we find several examples of the right in the early Capitulations granted to the Italian States by the feudal and Christian States of Jerusalem and Cyprus. The Genoese were, at that time, in the habit of stipulating for privileges not only for Genoese subjects, but also for those who were "dicti Januenses," or "districtuales Januae." Similarly Venice stipulated for those "qui Veneti appellantur," or for those "qui pro Venetis se tenent;" and Pisa stipulated in the same way for those "qui Pisano nomine consentur." Apparently there were four possible classes who might benefit from the privileges granted to those cities: First, the citizens

themselves; secondly, the vassals of the city; thirdly, the natives of the state where the privileges were granted, such as Syrians, Greeks and Jews who were merchants, and wished to benefit by the privileges granted to the Italians; and, lastly, merchants who were subjects of some other European State, but whose state had received no privileges from the local authority.[1] The first two classes offer no difficulty, but the last two have special interest; we shall consider the last first.

The last class of persons receiving privileges we may call protected foreigners, and we may distinguish them from the first two classes whom we may call subjects, and the third class whom we may call protected natives. In the tenth century it was necessary for a European State, which wished to trade with one or other of the Eastern States, to enter into special treaty arrangements with that state, and obtain privileges and immunities for its merchants; the subjects of a European State not having these privileges were not allowed to enter the ports of the Eastern State; or if, by any chance, they did enter, they suffered such grave inconveniences that they were not likely to come again, supposing they were allowed to depart. Under such circumstances the only policy open to a merchant of an unprivileged state was to pretend to be the subject of one or other of the privileged states. Sometimes, however, a privileged state would expressly stipulate that her privileges should be extended to those who came under her protection. Thus the Consul of Montpellier asked the King of Jerusalem and Cyprus for certain privileges, "for all the merchants and inhabitants of the said town and others navigating with them or under their said consul or flag." The practice was apparently for the consul to grant a certificate of nationality to such foreign merchants as he was willing to protect. The person thus protected escaped the payment of custom dues, or at least only paid the reduced dues granted to the protecting state; thus causing considerable loss to the local revenues. The protected persons were, moreover, under the jurisdiction of the protecting consul, and were governed by the laws of his state, living within his funduk or quarter, and benefiting by all the privileges granted to his state. This right was frequently abused, and the loss it entailed to the local authorities naturally led to their disapproval of the system. As early as 991 we find in the treaty between Venice and

[1] Rey, ch. ii.

Constantinople, of that year, a clause by which the Venetians were forbidden to allow the inhabitants of Bira, Amalfi or the Jews, to benefit from their privileges by pretending they were Venetians.

The same practice existed from an early date in Mohammedan States. Thus Amalfi acted as the protecting state for Christian merchants and pilgrims at Jerusalem in 1080. And in the thirteenth century there was a Capitulation between Venice and the Sultan of Egypt, in virtue of which foreign pilgrims coming on Venetian ships were to receive security for their persons and property, as well as the same treatment as had been granted to the Venetians in regard to customs and jurisdiction. From Breydenbach we learnt that in 1483 the Catalans acted as the protectors of all unprivileged foreigners in Alexandria. The French at first only received privileges in Egypt as coming under the protection of the Catalan Consul. As early as Saladin there is evidence of the recognition of this practice, as in his Capitulation to the Pisans in 1173 he makes them undertake not to carry foreign merchants who are subjects of an enemy state. We have discussed the same question as it arose under the Ottoman Capitulations, and have seen the claim made by France to be the protector of the subjects of all states other than Venice. This claim of Protection on the part of France was renewed in her last Capitulation in 1740; but as practically all European States, and several American States, are now protected by their own agents, France's claim of Protection, except in so far as it relates to Religious Protection, offers no difficulty; and could only be objected to by Turkey in so far as it enabled a foreigner to benefit by customs' reductions to which he would not otherwise be entitled. The protection of natives, however, offers very considerable difficulty, and led to very serious interference with the rights of the sovereign power in Turkey.

The right of a Foreign State to protect the subjects of Turkey is much more unjustifiable than the claim to protect foreigners, especially after consideration of the extent to which the practice was carried during the eighteenth century. The origin of the practice seems to have arisen out of the fact that foreign merchants or consuls were in the habit of employing natives as their domestic servants; and that these persons of lowly condition were treated as holding a position similar to that of a protected foreigner, was a fact which did not attract much attention, owing to the small number of the persons affected; but when the international rivalries,

which arose between the different foreign consuls, led them to extend the practice in order to add to their prestige by increasing their clientèle, the question assumed different proportions; especially as these protected persons included some of the wealthiest native merchants. The person thus protected, it was claimed, although a subject, was completely free from local jurisdiction, and was under the jurisdiction of the consul protecting him; and further, was entitled to all the privileges of a foreigner, such as immunity from taxation.

The practice of granting Protection to native subjects existed from the earliest times.[1] The Italian cities which received special privileges from the Christian princes of the Levant were also given a quarter in the cities of that state. This quarter was entirely outside the jurisdiction of the local courts, and was governed by the Consul or Baily of the Italian State, who administered justice in accordance with the law of his own state. These colonies were essentially commercial, but the difficulties of carrying on business with the natives were considerable, and it was often found convenient to use the native Syrians or Jews as their agents. Thus, gradually, a large section of the inhabitants of these Italian quarters came to be natives, these natives being under the jurisdiction of the foreign consul of the quarter. The Christian States of the Levant were feudal, and the laws and the taxes were those of a feudal state; native subjects were in consequence very willing to come within the merchant communities, and so share in the immunities and privileges accorded to those communities. The same practice was found in Cyprus and in the Greek Empire. The most important example of the practice in Constantinople was the protection claimed by the Venetians over the Jews and Armenian Catholics. The same difficulties arose between the local government and the protecting states in all these cases.

In the Ottoman Empire the practice began by the foreign consuls granting a right of Protection to the native guards and interpreters which it was necessary for them to employ. The Capitulations recognised the necessity of this practice, and accorded to these persons the same privileges as were given to the subjects of the state they served:—

"That the ambassadors and consuls shall and may take into their service any janizary or interpreter they please, without any

[1] Rey, ch. ii.

other janizary, or other of our slaves, intruding themselves into their service against their will and consent."

"That the Ambassadors of the King of England, residing at the Sublime Porte, being the representatives of His Majesty, and the interpreters the representatives of the ambassadors for such matters, therefore, as the latter shall translate or speak, or whatever sealed letter or memorial they may convey to any place in the name of their ambassador, it being found that that which they have interpreted or translated is a true interpretation of the words and answers of the Ambassador or Consul, they shall be always free from all imputation of fault or punishment; and in case they shall commit any offence, our judges and governors shall not reprove, beat, or put any of the said interpreters in prison, without the knowledge of the Ambassador or Consul."

"That in case any of the interpreters shall happen to die, if he be an Englishman proceeding from England, all his effects shall be taken possession of by the Ambassador or Consul; but should he be a subject of our Dominions, they shall be delivered up to his next heir; and having no heir, they shall be confiscated by our fiscal officers."

"That the interpreters of the English Ambassadors, having always been free and exempt from all contributions and impositions whatever, respect shall in future be paid to the Articles of the Capitulations stipulated in ancient times, without the fiscal officers intermeddling with the effects of any of the interpreters who may happen to die, which effects shall be distributed amongst his heirs."

"That the aforesaid King, having been a true friend of our Sublime Porte, His Ambassador, who resides here, shall be allowed the servants, of any nation whatsoever, who shall be exempt from impositions, and in no manner molested."[1]

Thus, although the right existed in earlier Capitulations, but less clearly stated, article 43 of the French Capitulation of 1740 says: "Les privilèges ou immunités accordés aux Français auront aussi lieu pour les interprétes qui sont au service de leurs ambassadeurs." The number of these dependants were, however, frequently in excess of the absolute necessities of the consuls. To

[1] English Capitulation, 1675, articles 28, 45, 46, 59, 60. See also Turkish Règlement of July 15th, 27th, 1869, art. 9, exempting certain consular employees from the payment of customs duties.

these were added a number of local tradesmen with whom the consulate dealt, and also native agents of the European merchants. The next step was a practice initiated by France and Venice, but followed later by England and Holland, and subsequently by practically all the European States; the practice was to appoint a wealthy Rayah as consul to one or other of these foreign Powers in some port of Turkey; the office was remunerative, owing to the large shipping dues paid to the consuls, and natives were, therefore, willing to accept it, apart from the fact of the immunities they obtained by so doing. The practice may have had much to justify it at first, but when consuls were appointed in towns where there was no subject of the state which the consul represented, and practically no trade, it could no longer be defended. These native consuls not only claimed the privileges of the Capitulations for themselves, but also claimed them for their families. The abuse had thus become considerable; but the last stage was reached when the consuls found that they could make large sums of money by selling certificates, or "Beraha," of protection to the natives, the benefits of these certificates being hereditary.

When the abuse had been carried as far as this, it is not surprising that the Turkish Government objected. But it was not only the government which suffered; the majority of these protected persons were, as a rule, members of one or other of the non-Mohammedan communities. Now these communities had to pay certain fixed sums to the government as their share in the taxes, and among these the most important was the sum payable as equivalent for military service. The method adopted for collecting these taxes was as follows:—The Ottoman Government fixed on a certain lump sum which was to be paid by each community, and then the heads of these communities themselves determined how this sum was to be divided among their members, and themselves collected it. Now it is abundantly clear that if the members of their community were reduced the burden of these taxes would fall more heavily on the members who were left. It is not, therefore, surprising to find that the members of the Religious Communities were among the principal objectors to this system of Protection, especially as in its developed form it withdrew the wealthiest of their numbers from sharing in the payment of taxes.

Such was the position at the beginning of the nineteenth century; both the Rayahs and the Ottoman Government united in their objections to the practice of the foreign Powers, by which they granted protection to Ottoman subjects, and thereby withdrew them from the jurisdiction of their religious rulers and the Ottoman Government.

The chief offender at that time, in regard to this practice, was Russia; and it was mainly from jealousy at Russia's increasing influence in Turkey that France was induced, in 1808, to enter into negotiations to check the abuses of Protection. France undertook not to grant any certificates of protection, provided the other Powers gave similar undertakings; and Treaties from that date included a clause stipulating that no such certificate would be granted without the previous consent of the Ottoman Government. The abuse, however, still continued, and in September 1860 a circular was sent to the foreign embassies, in which it was stated that vigorous measures would be adopted towards the members of this new class of "Protected." In the first place, it had been decided in 1841 by the Porte that if these protected persons remained within Turkish territory they would be treated in every respect as Turkish subjects, and the courts would not admit foreign Powers to intervene on their behalf. As this had not proved effectual, the Porte in 1860 ordained that those who disclaimed their Ottoman nationality would be deported, their property sold, and their rights of succession within the empire cancelled.[1]

The final result of the negotiations which followed between Turkey and the Powers was the Law of Protection of 1863.[2] As a result of this law, the number of persons who were entitled to receive a certificate of protection was strictly limited, only a certain number of persons holding particular posts under the consuls and ambassadors, such as Dragoman, Kawas or Interpreters, being eligible; each certificate had, further, to be submitted to the government for its approval before being granted; and the right itself, and the privileges it entailed, were entirely personal to the holder of the post, and in consequence did not extend to his family, were no longer hereditary, and in fact were extinguished as soon as he ceased to occupy his post. The law, however, was to have no retroactive effect, and all those who were already entitled to "Protection"

[1] Engelhardt, vol. i. p. 66.

[2] Young, vol. ii. p. 232.

preserved their right. In consequence, there are two classes of protected persons in Turkey; the first in virtue of the Law of 1863, and the second consisting of those persons, or their successors, who had received a certificate of protection before 1863.

The Law of 1863 solved, once and for all, the question of Protection of native subjects by foreign Powers; but the abuse which the practice of protection had produced continued, and in an aggravated form. For some time there had existed, side by side with the practice of abusive grants of protection, a practice by which Ottoman subjects might become the naturalised subjects of some foreign Power, without ever leaving Ottoman territory. This second practice now became so general that the evils of protection were surpassed, and new negotiations had to be entered into with the Powers. The result was the Ottoman Law of Nationality of 19th January 1869.[1] The Powers, with the exception of Russia and Greece, immediately gave their consent to the new law.

In considering the terms of the Law of Nationality of 1869 there are two points to be remembered: first, that the law was based on the French Law as it existed at that date; and, secondly, that its principal object was to check the abuses of denationalisation. We have seen, when considering the Tanzimat, that all the new legal and administrative reforms which were introduced at that time were modelled on the existing French system. It was just at this date that certain new principles, in regard to nationality, were first introduced into International Law; these were not adopted in France till some few years later, and, in consequence, the Ottoman Law is more in accordance with the older system than that which is now universally accepted by the United States and the principal European Powers. The primary object of the new law was, further, to check the abuses of denationalisation, the most important articles of the new law relate, in consequence, to this subject; and other very important questions of nationality are either ignored entirely or only treated in a very summary manner. The law has effectually dealt with the abuse which it was intended to check, but a very large number of other important questions are left unsolved, and a more comprehensive and more modern law is very much needed in the Ottoman Empire.

The foundation of the law is a mixture of the *Jus Soli* and *Jus*

[1] Young, vol. ii. pp. 226 to 229, Aristarki Bey, vol. i. p. 7.

Sanguinis theories. Article 1 lays down the rule of the *jus sanguinis*, and "the child of an Ottoman father and Ottoman mother, or of an Ottoman father, is Ottoman"; but article 9 states a presumption which is as fully in accordance with the *jus soli*, "every person dwelling within Ottoman territory is reputed an Ottoman subject and treated as such, until his quality of foreigner has been properly set up." Article 2 also recognises a certain privilege which results from the *jus soli:* "Every person born within Ottoman territory of foreign parents can, within the three years which shall follow his majority, revindicate the quality of Ottoman subject;" in other words, if he wishes to become an Ottoman subject he does not require to follow the ordinary rules of naturalisation, which are laid down in article 3. The presumption of article 9 in favour of Ottoman nationality is entirely in agreement with the rule of Mohammedan Law, which is, that "persons found in a Dar are *primâ facie* held to belong to it." In practice this rule would meet the case of a foundling, or of a child of parents whose nationality was unknown.

The ordinary method by which a foreigner may acquire Ottoman nationality is stated in article 3, and is in conformity with the universally accepted principles of International Law. The foreigner must be major, must have resided within Ottoman territory for five years, and must address a petition to the Turkish Minister of Foreign Affairs. In addition to the exception provided for in article 2, Ottoman nationality may be granted "as a special favour," and without the necessity of conforming to the conditions of article 3, to such person as the Imperial Government shall consider "worthy of this special favour." The age of majority is to be determined by the law of the foreigner and not by Ottoman Law.

Articles 5 and 6, when we recall the immediate object of the law, are the most important, as they deal with the question of how an Ottoman subject may become a foreigner. Two cases are distinguished: where the Ottoman subject has received the consent of his government to become naturalised abroad, and where he has not. "An Ottoman subject who has acquired a foreign nationality *with the consent* of the Imperial Government is considered and treated as a foreign subject; if, on the contrary, he has acquired a foreign nationality *without the consent* of the Imperial Government, his naturalisation will be considered null and void, and he will continue

to be considered and treated in all points as an Ottoman subject. No Ottoman subject can in any case become naturalised abroad without first having obtained an act of authorisation issued in virtue of an Imperial Iradah." "The Imperial Government can nevertheless declare the loss of the quality of Ottoman subject in the case of any Ottoman subject who shall become naturalised abroad or who shall accept military office under a foreign government *without the authority of his sovereign.* In such a case the loss of the quality of Ottoman subject entails *ipso facto* the prohibition, in regard to the person who shall have incurred it, from again entering the Ottoman Empire." The result of these two articles may be briefly summarised as follows:—If the Ottoman subject received the authorisation of his government by Imperial Iradah his position was secure, he acquired the quality of foreigner, and, as such, he was entitled to the benefits of the Capitulations. But if he did not obtain this authorisation there were two courses open to the Ottoman Government: it might either consider the naturalisation as null and void, in which case the individual interested remained an Ottoman citizen, and was therefore unable to claim the privileges or immunities of the Capitulations; or it might consent to the naturalisation being considered operative, but in this case the individual in question was obliged to quit Ottoman territory and never return. The difficulties in regard to the application of the Capitulations were thus avoided.

These articles are opposed to the principles of modern legislation first stated in the American Act of Congress of 1868. "The right of expatriation is a natural and inherent right of the people." But if we compare them with the edict of Louis XIV. of 1669, or with Napoleon's Decree of 1809, in which he threatened the death of any Frenchman who became naturalised abroad, we find that these articles are much more equitable, and much more in accordance with the modern practice of nations. Nor do they compare unfavourably with the earlier English practice, which was in existence till 1870, and which was summed up in the maxim "*nemo potest exuere patriam.*" The lengths to which this rule was carried in England, especially during the war of 1812, do not entitle us to criticise the Ottoman rule of 1869 too severely. Taking into consideration all the circumstances of the case, and remembering the date of their promulgation, there was nothing contrary to existing international principles in those articles; in fact, they are exactly similar to the French

Imperial Decree of 1811: "No Frenchman can be naturalised abroad without our authority."

The position of the Ottoman Government is stated, with clearness and with commendable reserve, in the memorandum which accompanied the Law of 1869.[1] "The Imperial Government has always recognised that the right of the individual to leave the country of his origin, to adopt a new fatherland, and to establish himself where his interests or convenience call him, is a right which is founded on the principles of individual liberty.[2] But it has for some time past had to struggle against abuses which arise out of the Capitulations, and which increase from day to day. . . . It was in this manner that an entire class of Protected Foreigners was created in Turkey, the numbers of which surpass those of the foreign subjects themselves. . . . The Imperial Government had hoped to remedy this state of affairs, in part at least, by the ordinance drawn up in 1863. . . . Our hope has not, however, been realised. As soon as this ordinance was promulgated, the number of Ottoman subjects adopting foreign nationalities sensibly increased and in proportion to the decrease in protected persons. . . . In view, and for the simple purpose, of preventing the Ottoman subject, who has his domicile in the Ottoman Empire, from escaping from his legitimate rulers, the law requires the antecedent authorisation by the Sovereign of his change of nationality. . . . The question of nationality in Turkey is a European question; all the Powers who have entered into treaties with the Sublime Porte are interested in it; every law or ordinance on the subject ought to be the joint work of the Sublime Porte and the representatives of these Powers. . . . The Law in question ought not to have retroactive effect, nor should it affect any rule contained in existing treaties."

The Ottoman position is essentially reasonable; all that it asks is that the Powers should observe the ordinary principles of International Law in regard to naturalisation. The Ottoman Government merely reserves to itself a certain power, already claimed by certain fully civilised states, by which to protect itself from the fraudulent naturalisations granted by other states to her loss. The necessity for some such power will be clearly evident from the following quotation: "We must not forget that in 1841, and a few years later,

[1] Cogordan, "Nationalité," p. 547.

[2] The Shariah does not allow a subject to become a member of another state.

in 1860, the Divan was under the necessity of taking precautions against the practice of consular protections, that is to say against acts of fraudulent denationalisation which were practised among the Christian Ottomans. The abuse had not become less general and the Greek rayah, against whom it was specially necessary to take punitive action, were so far enhardened as to go to Athens, where the agencies were making a regular commerce of it, and procure titles which authorised them to reside in the Ottoman Empire as Greek subjects enjoying the immunities of the capitulations. It has been stated that in Turkey out of 300,000 persons who were considered Greeks, 150,000 were known to have been born on Ottoman territory of Ottoman parents. And that in Constantinople alone, there were 21,000 Greeks whose Ottoman origin could have been easily established by the local police. It is in this manner that we may explain how the population of the Kingdom of Greece, which was only 750,000 souls one year after the war of independence, attained the figure of 1,056,000 when the census was taken before the annexation of the Ionian Islands, that is to say in a period of less than thirty years."[1]

Russia and Greece, the chief offenders, were the only Powers to withhold their consent to the new law. The Russian refusal was, however, based on special circumstances connected with arrangements which Russia had herself entered into with Turkey in regard to the matter before the promulgation of the Law of 1869. So soon as these special difficulties were overcome, Russia accorded her consent. Greece has not yet given her consent. The Greek law of nationality in force at that time was contained in article 15 of the Greek Civil Code of 1857. According to this article a foreigner, who wished to become a naturalised Greek subject, required to be of full age according to the law of his origin; he must make a declaration of his intention before the mayor of the place in which he intended to reside, and must thereafter continue to reside for a certain period within Greek territory: this period was two years for persons who had been born in Greece, and three years for those born abroad. There was also a special form of privileged naturalisation, but even in that case residence in Greece was an essential condition. Thus the naturalisations granted to Turkish subjects were entirely contrary to Greek Law, and Turkey had some reason to object. Since then

[1] Engelhardt, vol. ii. p. 102.

the Greek Law has been twice modified: by a Law of 19th February 1881, the condition of residence within Greek territory might be dispensed with by a Royal Decree; and by a Law of 3rd December 1883 residence within Greek territory became unnecessary, as the foreigner desiring to become a naturalised Greek might take the oath of allegiance in a foreign territory before the Greek Consul. Egypt is fortunately in a better position, as her relations with Greece on this subject were arranged satisfactorily by a diplomatic agreement of 2nd February 1890, the legality of which has been recognised by the Mixed Courts.

Article 8 of the Law of 1869 deals with the position of the child whose father has been naturalised. "The child, even when a minor of an Ottoman subject who has been naturalised a foreigner or who has lost his nationality does not follow the condition of his father but remains an Ottoman subject." "The child, even when a minor, of a foreigner who has been naturalised an Ottoman does not follow the condition of his father but remains a foreigner." Thus a change in the nationality of a father does not affect his children, but is entirely personal to himself. This is contrary to the modern principle, which respects the unity of the family. "In the majority of countries, the family is considered, as far as it includes the wife and minor children, as forming an indivisible whole in respect to nationality. The father of the family is free to change his nationality, and this change entails that of his minor children and of his wife." The arguments which have been used in support of this principle apply with even greater force in Turkey and Egypt, where so many different systems of jurisdiction exist side by side, and where already the question of competence is so much involved. But the rule laid down in article 8 is entirely in conformity with the French Law of that date, and is in accordance with the principles supported by such an eminent jurist as Laurent. "In French Law," writes Laurent[1] of the system then in existence, "children acquire at birth the nationality of their father. . . . Can this nationality of origin and of race be taken away from them by the act of their father? I have always supposed that the father had not this right, and there is no doubt as to this in the French system which I have stated; it applies to the children as well as to the wife; it has even more force when it refers to the children, since they hold their nationality by race, that is by

[1] Laurent, iii. p. 295, No. 165.

the will of God, whereas the married woman follows the condition of her husband in virtue of the law. . . ." Recognising the influence of French Law in Turkey at that time, it is not surprising that this principle was adopted, but the legal complications which must result from it within the Ottoman Empire are only another argument in favour of the revision of the law.

What is the position of the married woman under the Ottoman Law of 1869? This is a question which, considering the interests involved, is of the very greatest importance; but it is a question entirely ignored by the Ottoman Law. The only article which touches upon the position of a married woman is article 7, which says: "The Ottoman woman who has married a foreigner may, if she becomes a widow, recover her quality of Ottoman subject, by making her declaration within the three months which shall follow the death of her husband." From this we may deduce that an Ottoman woman, who marries a foreigner, becomes a foreigner, at least when the law of the foreign husband considers that by her marriage she acquires his nationality, as most systems now do. The wording of the circular, issued to explain the Law of 1869, supports this view: "As the Ottoman woman who marries a foreigner ceases to be an Ottoman subject article 7 gives her the power of recovering, if she becomes a widow, her original nationality. . . ." The practice of foreigners marrying Ottoman women was a common one; before foreigners were allowed to own Ottoman landed property the foreign husband would buy the land and have it registered in his wife's name. But this practice is of little use as an argument, since the second part of the article says: "This article in any case is only applicable to her person: her property is governed by the laws and regulations in general which regulate it." The question is one which has given rise to very considerable discussion.

The question in regard to the Ottoman woman who marries a foreigner is difficult, but that of the foreign woman who marries an Ottoman subject is even more difficult, since the law does not mention it even incidentally. The position which Ottoman women occupy socially also complicates the question from the point of view of a Christian woman who marries a Mohammedan. It has been argued that as the Ottoman woman, by deduction from article 7, becomes a foreigner on her marriage with a foreigner, so the

converse must also be true, and the foreign woman must become Ottoman on her marriage to an Ottoman. The rule of Mohammedan Law is in support of this theory, as the woman of the Dar-el-Harb who marries a Mohammedan or Rayah herself becomes a Mohammedan or Rayah. The French Law of that date was also in the same sense, and the foreign woman became a French subject on her marriage with a Frenchman. This rule would also accord best with the principle of maintaining the unity of the family; and if it was not for the exceptional social position of women in the Ottoman Empire this theory would probably prevail. The question, so far as Egypt is concerned, has, however, remained unsettled; and there are a number of decisions of the different Courts interested which may be quoted in favour of each theory. Thus the Egyptian Mixed Courts have decided that an Italian woman and a French woman preserved their original nationality.[1] The majority of the French consular[2] decisions have been to the same effect; but the French Consular Court at Cairo, on 23rd March 1900, held that a French woman who had married an Ottoman subject was an Ottoman, and a circular from the French Foreign Office to their consular and diplomatic agents instructs them to consider the French woman who has married an Ottoman as herself being Ottoman. The result of article 10 of the English Naturalisation Act of 1870 would appear to make the English woman follow the nationality of her husband, and this seems to be the interpretation generally given by the English Consular Courts to the article. Clunet adds the following note to the report of a recent case on this subject:—"C'est une question vivement débattue que celle de savoir si une étrangère qui épouse un sujet ottoman acquiert par son mariage la nationalité de son mari."[3]

[1] Mixed Court of Appeal, Alexandria, 11th April 1895; B. L. J., vii. p. 219; and 25th Jan. 1901.

[2] French Consular Court, Alexandria, 4th July 1891; Clunet, xviii. p. 601; Court of Appeal of Aix, 14th Dec. 1891; and also Italian Consular Court of Alexandria, 7th Sept. 1891; and Court of Cassation of Turin, 29th April 1871.

[3] See Clunet, 1905, also Clunet, 1901 and 1902, articles by R. Salem; and an article in the "Revue Critique," 1894, p. 358, by Professor Testoud. Both Salem and Testoud are in favour of Ottoman nationality by the foreign woman who marries an Ottoman subject.

For English Law, the question does not seem fully settled; but see two articles by Sir Dennis Fitzpatrick in the "Journal of the Society of Comparative Legislation," August 1900, and Dec. 1901.

The authority competent to decide questions of nationality in Turkey is an administrative authority, specially appointed for that purpose by an ordinance of 17th July 1869. In Egypt it is the courts which are competent to decide all disputes as to nationality, but the question may not be raised as a principal one, but merely as incidental to some other question; and as a rule it is in reference to the competence of the court seised. The party who claims a right which depends on the existence of some particular nationality, must, in accordance with ordinary principles, prove the existence of this nationality, supposing it to be disputed. The ordinary modes of proof are allowed, and when the case is between two private individuals a consular certificate of nationality is accepted as *primâ facie* evidence of the fact;[1] but a consular certificate has been held to be of no value in a dispute with the government. The question ought then to be decided diplomatically.[2]

The Ottoman Law of Nationality of 1869 was made applicable to Egypt by a circular of 1869.[3] But in so far as Egypt is concerned there is very great need of a more modern law. The result of the Firman of investiture of 1892, and of those which preceded it, has been to grant a very considerable autonomy to the Egyptian Government, which has been enlarged still more as a result of the very great advance in the civilisation of Egypt. Apart from the questions which have been left unsettled by the Law of 1869, and those which require to be brought up to date, it is absolutely necessary that Egyptian nationality, as distinct from Ottoman nationality, should be defined. The essentially different position which Egypt occupies to that of the rest of the Ottoman Empire has made it clear that some definition of an "Egyptian Native Subject" is necessary; and several recent Decrees, such as those regulating elections and service in the army, have attempted to provide a definition. The most recent of these is the Decree of 29th June 1900, in which an "Egyptian Local Subject" is defined as including: "1. All persons established in Egypt before 1st January 1848 and who have preserved their domicile, provided they are not members of a foreign state; 2. Ottoman subjects born in Egypt of parents domiciled there, if they are still domiciled in Egypt; 3. Ottoman subjects who have complied with the obligation of military service or who have paid

[1] Alexandria, 15 Nov. and 13 Dec. 1877; Clunet, v. 187; B. L. J., I. p. 156.

[2] B. L. J., III. p. 95.

[3] Aristarki Bey, vol. i. p. 12.

the tax which is the equivalent for it; 4. Children born in Egypt of unknown parents; 5. Ottoman subjects established in Egypt for 15 years who have made a declaration to the Moudir or Governor of their place of domicile." This definition, however, must remain unsatisfactory so long as the principles of domicile continue in Egypt in their present undefined state.

The argument which has been stated above, that the law of 1869 was, so far as it went, in conformity with existing principles of International Law, is supported by the report of a commission appointed by the French Foreign Office to consider the Ottoman Law of Nationality.[1] "These rules," it says, "are in conformity with those which, for long, have found a place in the legislation of nearly all the civilised nations, especially in the Code Napoléon (articles 9, 10, 19) and in the French Laws of 22nd March and 3rd December 1849, 7th February 1851, and 29th June 1867." In reference to the special restrictions in regard to Ottoman subjects becoming naturalised abroad, the reporters admit that the individual is, in principle, free to change his nationality, but, they add, there ought to be certain restrictions in this principle; and the older French Law offers examples similar to those adopted in the Ottoman Law. "We must conclude that the new Ottoman Law in regard to nationality is, as a whole and in all its parts, in harmony with rules and dispositions consecrated by the laws of civilised nations; and in consequence, it is impossible to find any derogation whatsoever from the principles of International Law. . . . It does not modify in a single point the rights and privileges which the Capitulations confer on foreigners. . . . No expression has been employed in the drafting which can have the result of giving a retroactive effect to its dispositions. . . . Ottoman nationality is not imposed on any foreigner against his will. . . . The Capitulations and customs preserve, after the publication of the Law of 19th January 1869, all the authority which they had formerly. The Law of 19th January 1869 contains nothing which is contrary to International Law in general, and does not affect in any way the rights and privileges recognised in the Capitulations and consecrated by custom."

The Ottoman Law of 1869 was introduced for a special purpose, namely, to put a stop to abusive grants of naturalisation, which were injurious to the sovereign rights of the Sultan. This purpose was

[1] Cogordon, p. 553.

successful. Before 1869 the Ottoman Empire had been governed in this matter by Mohammedan Law, which does not know what nationality, in the European sense, means. The new law defined nationality and laid down rules for its guidance, and these rules were in accordance with the existing practice of that legislation which was adopted as the Ottoman model. So far there can be no criticism of the law; but, since the date of its promulgation, international principles have been modified considerably, and the position of the Ottoman Empire itself has been greatly altered. These modifications require a corresponding modification in the original law. In no part of the Ottoman Empire has the position been so greatly modified as in Egypt. At the time the law came into existence Egypt was much in the same position as any other Ottoman province; but since that date Egypt has advanced in civilisation where the Ottoman Empire has remained stationary; and Egypt has now acquired such a degree of independence that it has become necessary that legislative notice should be taken of the new conditions. The law which was sufficient for Turkey in 1869 is not sufficient for Egypt to-day. The first object of reform should be to bring the existing rules into accord with modern principles; the next, to deal with the cases untouched by the original law; and the last, and not the least important, to distinguish clearly between an Egyptian local subject and an ordinary Ottoman subject.

CHAPTER XI

THE LAND LAWS OF TURKEY AND EGYPT

THE effect of the Tanzimat upon the land law of Turkey was not the least important of the reforms attempted during the period; but, to understand the situation which the Law of 1867 was intended to remedy, we must first consider the Mohammedan Law on the subject, and also the modifications made by previous Sultans from time to time. The Hanafite jurists divide the land of the Moslem world into two classes—Ushûri and Kharâdji lands. The principal fact determining the legal character of any given piece of land is its geographical situation. This, however, may be modified in the case of conquered territories by the action of the conqueror. In the first place, then, all land which is situated in Arabia proper is Ushûri land; while, speaking generally, all the land of conquered countries is Kharâdji land, although it may, under certain circumstances, become Ushûri land. This principle of classification is based on a distinction which is drawn between the different rivers of the world: thus, land which is watered by Arab streams is said to be watered by the "water of ushûr," and is in consequence Ushûri land; while land which is watered by other streams is said to be watered by the "water of the kharâdj," and is therefore Kharâdji land. This, however, is again complicated, since rain-water is looked upon as "water of the ushûr."

Ushûri lands may be divided into two classes: first, lands which are Ushûri of right, including all the lands of Arabia proper, watered by Moslem streams; and, secondly, those which have been made Ushûri lands on conquest by the Imam or Commander of the Faithful. This second class may again be subdivided into two classes, for in certain cases the conquerer is obliged to declare the land Ushûri, while in others he may do so at his option. Thus, if the conquered land is watered by the "water of ushûr," that is, either by a Moslem river or by rain-water, it, *ipso facto*, becomes Ushûri on conquest, and this irrespective of whether it is owned by

Moslems or not; if the conquered land is watered by the "water of the kharâdj," it must still become Ushûri on conquest if it is delivered over to the Moslem conquerors, or if the inhabitants of the country immediately embrace Islam. On the other hand, if the conquered land is watered by the "water of the kharâdj" and the inhabitants do not immediately become Moslems, but do so before the conqueror has decided what he intends to do with the land, the Imam has the option of declaring it either ushûri or kharâdji as he pleases. Thus Kharâdji land is all land watered by the waters of the kharâdj which has not been declared ushûri on conquest.

The religion of the owner of the land has thus a certain influence on the legal character of the land, since, except in the case of land watered by the "water of the ushûr," which is Ushûri irrespective of the religion of its owner, all Ushûri land must be owned by Moslems. And this principle receives further force from the rule that a piece of Ushûri land which is watered by the "water of the kharâdj" becomes Kharâdji if it passes from the hands of a Moslem and is owned by a non-Moslem. Apart from this, the declaration made by the Imam at the time of the conquest is final, unless the land cease to be Moslem or unless there is a change in the nature of the water which irrigates the land. A non-Moslem who pays the capitation tax may, however, own Ushûri land watered by the "water of the ushûr" or Kharâdji land. The nature of the tenure allowed to these possessors will be discussed later.

The principal importance of this distinction is in reference to taxation. Owners of Ushûri land pay a tax of one-tenth of their gross yield. The tax on Kharâdji lands is of two kinds: the first is the Kharâdj Moukâsamah, which is a proportional tax based on the gross yield, but which must in all cases be greater than that paid on Ushûri land; the actual amount is fixed by the conqueror, but must not be less than a fifth or greater than a half; the land thus taxed is that which is capable of producing what are called the more costly crops, such as cotton or saffron. The second form of Kharâdj is the Kharâdj Wazîfah, which is a fixed tax due from the land as soon as it is fit for cultivation, whether it be actually under cultivation or not. "It was fixed once for all by the Khalif Omar at one kafîz (a measure of capacity) of the produce, and one dirham in silver for each unit of the measure of superficies in use in the country where the land is situated; it is exigible either in kind, or in money,

according to the value of the produce, and for each agricultural year."[1] In principle, after the constitution has been once declared at the time of the conquest, there can be no change from Kharâdj Moukâsamah to Kharâdj Wazîfah, or *vice versa;* and if any difficulty should arise in the future as to the character of the holding, the only method of solution is to refer to the original constitution at the time of the conquest. Both the Ushûr and the Kharâdj Moukâsamah take into consideration the productivity of the land taxed, but the Kharâdj Wazîfah does not. There is in consequence a provision in virtue of which this tax may be reduced if the land becomes entirely unproductive.

Little is known of the extent of the rights enjoyed by a proprietor under Moslem Law. The right of ownership was, however, recognised, and is said to have been based on a verse of the Koran: "It is God who has created for us everything which is on the earth," which is interpreted to mean that everything which is not in the possession of another may be occupied by the first comer. The sentence has a striking resemblance to one in Blackstone[2]: "The earth and all things therein were the general property of mankind from the immediate gift of the creator." The Hadith develops the doctrine of the Koran by stating that whoever has "re-enlivened a dead land" becomes the owner of it, which may be taken as meaning that whoever cultivates an abandoned or uncultivated land becomes its owner. Thus we come to the explanation of ownership which has been most commonly adopted at all times: "Occupancy is pre-eminently interesting on the score of the service it has been made to perform for speculative jurisprudence, in furnishing a supposed explanation of the origin of private property."[3] Mohammedan jurisprudence does not assist us in the definition of the rights of an owner; it is probable that, although the right was admitted, it was not much respected in practice. To understand the position we have to conceive a system of jurisprudence similar to that which existed in Rome before the promulgation of the Twelve Tables: the executive was all-powerful and considered itself above all law, while the judiciary was so much a part of the executive that it gave no serious guarantee for the due administration of justice. "In those countries regularly organised tribunals are wanting; in them a good rule of legal procedure is

[1] Artin Pasha, p. 11.

[2] Blackstone, book ii. ch. 1.

[3] Maine's "Ancient Law," ch. 8.

wanting; a legislation within the reach of all is wanting; and despotism renders it quite impossible for the judges to pronounce impartial decisions."[1] The law was only known to a limited class, and was the monopoly of a religious order. What law there was, was contained in religious works written in a style which could only be understood by the initiated; none but the Ulema were in a position to understand them, and the Kadis were chosen from among the Ulemas. The judges themselves had no security, as they might be removed at will by their rulers.

In spite of this general obscurity there are one or two points in reference to the Ottoman land laws which are clear. In the first place, there were always *Wakf* lands, or lands dedicated inalienably to pious and charitable purposes; there was also *Emîriah* or state lands, which included the lands of the sovereign, or lands granted by the sovereign with a title less than ownership; and, finally, there was the *mulk* land, or land held in full ownership by private persons. The Turkish land law of 1868[2] mentions these three classes of land, and also two others which require no explanation. These two are: *matroukah* land, or land which was common to all, *res communis omnium*, and which could not be subject to private ownership—of such were the lands taken up by the highroads; the other was *mouât* land, or *res nullius*, either because it had never been occupied, or because it had been owned and abandoned. We shall deal more fully with the first three kinds of land.

Mulk land is defined by the law of 1858 in the following terms:—"La terre mulk est à l'entière disposition du propriétaire, elle se transmet par voie d'héritage, comme la propriété mobilière, et peut être soumise à toutes les dispositions de la loi, telles que la mise en vaqouf, le gage ou hypothèque, la donation, préemption ou retrait vicinal." This definition describes a right of ownership with all the rights of *dominium plenum*, the *jus utendi, fruendi et abutendi*. This very completeness renders it suspicious, and it is probable that it is rather the adaptation of some European definition, than the true description of an actual state of affairs. This is, unfortunately, a common characteristic of all the reforms of the Tanzimat. In the first place, the right of hypothec[3] is unknown to Mohammedan Law,

[1] Gatteschi, p. 5.

[2] Aristarki, I. p. 57.

[3] The Shariah allows property to be given in pledge. Thus the Hedaya, vol. vi. book xlviii. ch. 1, p. 630: "This practice is lawful, and ordained; for

and the Law of 1858 expressly says that mulk lands are to continue to be regulated by the Sharia. We must therefore make the reservation that although mulk or ownership could exist in law, it was doubtful whether it actually existed in practice over landed property, either at the period of the Tanzimat, or under the earlier Sultans. Subject to this reservation, mulk lands included all ushûri lands, either owned by Moslems or granted as ushûri to the original owners after the conquest; lands forming part of the state lands, specially granted in full ownership by the Moslem rulers to individuals, especially of the royal family or of the official class; and all dwelling-houses,[1] gardens, orchards and town lands. Kharâdji lands which, on conquest, were left in the possession of their original owners were probably held by a right less than ownership; and from what is known of the Ottoman conquest, it would seem as if most of the conquered land was either appropriated by the state, or left in the hands of the original owners, who, remaining Christians, would hold it as Kharâdji land.

Emîriah lands include the greater part of the lands within the Ottoman territory. On the one hand, the Sharia accepts the principle that all land which is *res nullius* belongs to God, and hence to His representative the Prophet, or now the Khalif; on the other

the word of God, in the Koran, says, 'Give and receive pledges;' and it is also related, that the prophet, in a bargain made with a Jew for grain, gave his coat of mail in pledge for the payment." But whatever the property which was given in pledge, whether it was movable or immovable, the possession had to be transferred to the creditor, as was the case with pignus of the earlier Roman Law. It appears, however, that the creditor sometimes gave back the possession as a loan to the debtor; and Gatteschi quotes, p. 65, an Egyptian document of 1866, from which it appears that although the possession is said to be delivered, the delivery is simulated. Although many of the later Ottoman Laws speak of hypothec, it is doubtful whether it existed to any greater extent than this. In Egypt the Consuls claimed to be able to enforce any real rights in reference to their nationals, or lands of their nationals, as were recognised by their law; in this way, hypothecs were undoubtedly in existence in Egypt before the institution of the Mixed Courts; the Mixed Codes expressly provided for and regulated hypothecs in accordance with the rules of the Code Napoléon. The Egyptian Native Code, Art. 553, mentions a special form of pledge of land, called Garuka. "Garuka is a contract by which the debtor delivers his land to his creditor, who acquires the right to work it for his own profit, and to retain the enjoyment of it until the debt is repaid. Only holders of Kharâdji lands can enter into a contract of Garuka." Compare this with the French "Antichrèse."

[1] Houses and trees are movables according to Moslem Law, and they belong in full ownership to the builder or planter, even when built or planted on another's land.

hand, when new territory was conquered, provided the original owners were not allowed to continue their ownership as ushûri land, the Imâm was entitled to reserve a fifth of the land as his own share, the remainder being granted as ushûri to his followers who acquired the right of mulk, or was dedicated as wakf; or, if neither of these happened, it was continued in the possession of the original owners as Kharâdji lands, which, according to the Sharia, only entitled these possessors to a beneficial or usufructuary right, the proprietas, or actual ownership of the land, being considered as still residing in the state or sovereign. As a result, the Emîriah or state lands must necessarily have been very considerable. In order to provide for the due cultivation of the Emîriah lands, which were still in the possession of the state, the Sharia allowed the sovereign to make grants of such lands to private individuals, the grant being called *iqtaa*, which means literally a portion cut away. The grantee of an iqtaa was obliged to cultivate the land granted to him, subject to the liability of being dispossessed if he failed to do so; thus, according to the Hadith: "Every individual who, during three years, shall leave uncultivated a piece of land, of which he has possession, shall lose his rights over the same; and if a third party appears, who will cultivate it, this latter shall have a greater right to possess it than the former owner."[1] This grant of state lands by the sovereign might either confer on the grantee a full right of mulk, or simply a restricted usufructuary right; but even in the case of mulk, the condition applied, and if the land remained uncultivated, the grantee could be dispossessed. This restricted right was, according to the Sharia, essentially personal to the grantee, and did not pass to his heirs after his death. The grant was, in principle, in the nature of a reward for services rendered, usually military services, and, in consequence, it was possible that the heir might be continued in possession on the death of his ancestor, not so much because he was heir, but as a reward for services rendered by him, and entitling him to a grant on his own account. These restricted grants were essentially temporary, since not only did the condition of cultivation apply, but the state was always at liberty to revoke its grant.

An extension of the system of iqtaa was made by the Kanoun, and a system of military tenure existed in Turkey from a very early date. This military tenure was of two kinds, Ziamet and

[1] Quoted by Bélin, "De la Propriété en Pays Musulman," Paris, 1862, p. 116.

Timar, and the holders were called Sipahis. This system appears to have had much that resembled the tenure of the "agri limitrophi" of the Roman Empire, whereby the Roman veterans were granted a right over lands on the frontier, provided they held themselves in readiness to repel invasion; the state was the true dominus, the soldier proprietor had merely a right of emphyteusis. Creasy in explaining the zeal of the Ottoman soldiers, which so often proved irresistible, suggests that there may have been a more material motive of impulsion than the vision of paradise, that there may also have been a prospect of landed estate in this world.[1] "The Ziam, who signalised his prowess, might hope for elevation to the rank of Bey; and the Timariot, who brought in ten prisoners, or ten enemies' heads, was entitled to have his minor fief enlarged into a Ziamet. The Moslem, who did not yet possess either ziamet or timar, and was not enrolled in the regular paid troops, still served as a zealous volunteer on horse or foot according to his means; and besides the prospect of enriching himself by the plunder of the province that was to be invaded, or the city that was to be besieged, he looked forward to win by daring deeds performed among the Akindji or Azabs one of the Timars, that at the end of the war would be formed out of the newly-conquered territory, or which the casualties of the campaign would leave vacant." The earlier struggles of the crescent in Europe must have amply provided the conditions necessary for a repetition of the Roman system of agri limitrophi. There is a special point of interest in this account just quoted, since it suggests an amendment by the Kanoun of the Sharia, the conquered territory, we notice, was not given as ushûri land, but was granted under a tenure conveying a much more limited right, and this although the granters were true Moslems; a modification, which, if exact, would account for the small amount of mulk land in Turkey.

The Ziamets and Timars were grants of land made to the Moslem soldiery from the conquered territory added to the Ottoman dominions in Europe. The Timar was the smaller fief and consisted of from three to five hundred acres, and the holder had in time of war to provide a certain number of armed horsemen proportionate to the amount of the revenue; the Ziamets consisted

[1] "History of the Ottoman Turks" (E. S. Creasy, London, 1854, vol. i. pp. 179, 180), founded on Von Hammer.

of five hundred acres or more, and were held by a similar tenure; each was transmissible to the eldest son on death. The Sipahis were obliged to reside on their estates in order to be in a better position to perform their duties of military service; but apparently the duties of cultivation were performed by a class of persons living on the land in a position of subordination to the Sipahis. The tenure of these cultivators is not clear, but it seems that they were obliged to remain on the land at their superior's pleasure, that they could not alienate or pledge the lands they cultivated, nor give them in wakf; that the superior could compel them to work for him, and that if they did not cultivate the land they were liable to be deprived of it at their lord's pleasure. These cultivators appear for the most part to have been Christians, and may well have been in possession before the conquest.[1]

There was undoubtedly much in the system of Ziamets and Timars which resembled the beginnings out of which were developed the Feudal System in Europe, and it appears that some at least of the evils of that system were developing when Suleyman I. introduced legislation reforming the tenure. In the first place, he aimed at checking the evils of subinfeudation: no Timar was to be allowed to exist if its revenues fell below a certain value, but a number of Timars might be united together to form one Ziamet. A Ziamet could not be subdivided, nor split up into Timars, except only in the case where the Sipahi was killed in battle, leaving more than one son. Several persons might jointly hold a fief, but this required the express authorisation of the government, and was not encouraged, the joint fief being still looked upon as a single Ziamet. The fiefs could not be alienated in any way, but passed from father to son, and in default of male heirs the fief reverted to the state; new grants of these lapsed fiefs could be made, but in principle only by the sovereign himself, though in practice the smaller fiefs were sometimes granted to new holders by the viziers; but in this case there was no relation created between the grantor or grantee, the grant was made in the name of the Sultan, and there was no one between the Sultan and the Sipahi. The Sipahi was the vassal of

[1] A comparison, when the foundations on which it is based are so uncertain, is always dangerous, but there is much here that recalls the position of the coloni or the glebae ascriptitii.

his Sultan.[1] The second part of Suleyman's reform was directed towards the improvement of the Rayah tenants who cultivated the Timar and Ziamet lands; the regulations introduced for this purpose are called the "Code of the Rayahs." The new regulations "limited and defined the rents and services which the Raya who occupied the ground was to pay to his feudal lord. It is impossible to give any description of this part of the Turkish law which shall apply with uniform correctness to all parts of the Sultan's dominions. But the general effect of Solyman's legislation may be stated to have been that of recognising in the Raya rights of property in the land which he tilled, subject to the payment of certain rents and dues, and the performance of certain services for his feudal superior. The Englishman who understands the difference between the position of a modern copyholder and that of a mediæval villain towards the lord of his manor, will well understand the important boon which the enlightened wisdom of the Turkish lawgiver secured, if he did not originate."[2] The reform proved unfortunately shortlived; for under Murad III. venality, corruption and favouritism appear to have had full sway, and the Timars and Ziamets were sold to Jews or other traffickers, to be again sold or to be farmed out by them in spite of the law. Although Murad IV. abolished these abuses, the system of Ziamets and Timars had, by the period of the Tanzimat, come to be considered one of the gravest obstacles to reform, and the principal object of the Law of 1858 was to abolish the system and encourage the actual cultivators; this was to be brought about by the introduction of a system of "tapu" holdings.

The law of 1858 abolished the Ziamet and Timar tenures and introduced a new system, in virtue of which the actual possessors of the Emîriah lands, the cultivators, should find themselves in direct relationship with the state, the Sipahi being swept away. The Emîriah lands were to be granted directly by the government to the cultivators, together with a title-deed or tapu. The holder of a tapu was entitled to cultivate the land as he pleased; he was free to pledge or alienate it, provided he received the express permission of the state; and on his death the land passed to his lawful heirs, without the necessity for any new tapu being granted. If, however, the

[1] The number of larger fiefs or Ziamets, in Suleyman's time, was 3192; that of the smaller fiefs or Timars was 50,160. Creasy, vol. i. p. 327.

[2] Creasy, vol. i. pp. 328, 329.

possessor died without heirs, the land passed to the inhabitants of the village to which he belonged.[1] The only restriction on the right of alienation was that the holder might not give the land in wakf; the reason of this limitation is obvious, as the effect of the alienation would be to destroy the ultimate right of *proprietas* of the state, and transfer it irrevocably to a *universitas*. The permission of the state was also necessary before the holder could build houses or plant trees on his land, since, by the Sharia, trees and houses belong to the planter or builder in mulk! In return for the grant of these extensive rights the holder was obliged to make a certain payment to the government at the time of the original grant; and he was also liable to the rule of the Sharia, whereby, if the land remained uncultivated for three years, the holder was dispossessed. This new system closely resembles emphyteusis, the principal distinction being that the vectigal was a single payment made on entry and not an annual charge.

Wakf land is land that has been made the object of a transaction, whereby the original owner transfers the right of *proprietas* to a *universitas*, while the revenues are to be used in a particular manner specified in the agreement of transfer. Wakf, according to the Hedaya,[2] means in its primitive sense stopping or detention, while in its legal sense it means the setting apart of a given piece of property, in such a way that the rights of the person who has been made owner continue, while the use and enjoyment are for the advantage of some charitable purpose; it adds that, according to the disciples of Hanafi, "Wakf signifies the appropriation of a particular article, in such a manner as subjects it to the rules of divine property, whence the appropriator's right in it is extinguished, and it becomes a property of God by the advantage of it resulting to his creatures." We may define Wakf as a transaction, in virtue of which the right of ownership, whether of a movable or an immovable, is transferred irrevocably to a religious or charitable institution, in such a way that the thing transferred can never again be made the subject of a pledge or alienation, while the revenue is devoted to a special purpose which is usually of a religious or charitable nature. This definition is sufficiently wide to include the two different kinds of

[1] This suggests the possible existence of common proprietary rights in the village communities, rights which certainly existed in Egypt.

[2] Hedaya, vol. ii. book xv. p. 231.

wakf, the wakf of the Sharia and the wakf introduced by custom. If we had been dealing with Roman Law we might have aptly distinguished these two kinds of wakf by describing them respectively as Jus Civile Wakf and Praetorian Wakf: the first is the wakf recognised by the Sharia, and is called by Gatteschi Wakf Shari'y; while the second is an innovation of the Kanoun, sanctioned by the fatwa of the ulema, and which may be called Wakf A'adi or customary wakf.

Wakf Shari'y may, strictly speaking, be of two kinds, either wakf appropriated for the benefit of religion, or public wakfs which are appropriated for the benefit of the poor or for the welfare of mankind. For all practical purposes they may, however, be treated as the same. Any form of property, movable or immovable, may be given in wakf of this kind; but once it has been set apart it can never again be alienated, nor can it be diverted in any way from its special destination. Lands or buildings or books may be the object of a wakf, or the revenues of lands or buildings may be thus set apart to maintain mosques, schools, libraries, hospitals, fountains, cemeteries, or provide revenues for any other form of religious or charitable purpose. The founder of the wakf must have the right of mulk over the property set apart. The act of constitution requires to be made in the form of an official instrument before the Kadi, and registered by the Mehkemah; an informal constitution is only valid at the discretion of the founder. Any conditions whatsoever may be made by the founder as to the employment of the revenue or the administration of the property, provided always the disposition is final. The act of constitution should appoint a mitwally or administrator, and a nazir or inspector; if there is no nazir the administrator is subject to the inspection of the Kadi; the instructions of the founder are binding on the administrator, and he may be dismissed by the Kadi if he fails to fulfil his instructions or is guilty of misappropriation. The founder has absolute liberty in regard to the appointment of an administrator, and may appoint himself, his wife, or any member of his family, and he may even arrange an order of succession to the post as among members of his family. He may also create a life interest over the revenues in favour of himself or any member of his family, provided that on the death of the life-renter the revenues revert to the religious or charitable purpose.

The office of Mitwally and Nazir are, in principle, gratuitous; but, in practice, the administrators of wakfs take a good portion of

the income, in fact, all that is in excess of what is required to fulfil the directions of the founder; this excess ought properly to form a reserve fund, but the control of the authorities is lax.[1] This being so, the system of wakf is sometimes used for other than charitable purposes. On the one hand, it may be used to prevent an heir dissipating the ancestral estates; thus the parent constitutes his estate as wakf, appointing his heir as administrator, and arranging for the succession of the office within his family, only a certain part of the revenue is devoted to a charitable purpose, and the remainder is therefore at the disposal of the administrator. Again, since a wakf cannot be touched even by the most despotic ruler, the same device has been adopted to prevent the confiscation of the family estate by the sovereign; unfortunately the ruler can always confiscate all revenue which is not devoted to the charitable purpose.

Although, strictly speaking, wakf property is absolutely inalienable, it is permitted to the administrator to exchange one piece of immovable property for another, provided the exchange is advantageous to the charity. The property may also be given in lease according to the conditions laid down in the act of constitution. There are two forms of lease, the ordinary contract with an annual payment, and another by which the "lessee" pays a sum to the administrator on entry, receiving a perpetual right over the property "let," subject to the payment of an annual sum. This right passes to the heirs of the lessee, subject to a small fee paid to the Mosque or charitable institution on each entry.

Customary wakf is constituted by the grantor making a sale of his estate to a Mosque at a nominal price, the nuda proprietas passes to the Mosque, while the use and enjoyment remain in the hands of the grantor and his heirs, who, in return, are liable for the upkeep of the estate, and who pay a small annual sum or hikr, equivalent to the interest on the price originally paid by the Mosque. When the family of the grantor dies out, the estate becomes the absolute property of the Mosque. The grantor acquires, as a result of this transaction, a right similar to emphyteusis, which cannot be touched by his creditors, but which he may alienate with the consent of the administrator. The grantor may not build on the estate without the

[1] Gatteschi, p. 89, quoting from D'Ohsson, "Tableau Général de l'Empire Ottoman," Paris, 1797.

consent of the Mosque, but if he receives this consent, the buildings are at his disposal either to keep as his own in mulk, or to include in the wakf. The full property reverts to the Mosque on the failure of heirs of the grantor, or if the grantor or his heir fail during three years to pay the annual sum due.[1]

A question which assumed considerable importance during the period of the Tanzimat was whether foreigners should be allowed to become the owners of immovable property within the Ottoman Empire. It was generally considered at the time that foreigners were not entitled to do so, and the tendency of foreign governments seems to have been to check their subjects from becoming owners. The Hatti Humayoun granted the right to foreigners under the two conditions, that they paid the same taxes as native owners, and that they became subject to the local law. Some few years later the question was revived owing to the growing interest taken by French capitalists in Turkish bonds, and the connection of the Crédit Foncier of Paris with the Turkish Foreign Loan of 1865. Negotiations were reopened by the French Minister of Foreign Affairs, and a law was passed in 1867, based on the Hatti Humayoun, allowing foreigners to acquire the ownership of immovable property in the Ottoman Empire, a protocol of adhesion being signed by the different Powers.

The tendency of writers upon the subject of ownership of Ottoman land by foreigners has been to say that such ownership was contrary to the law of the land; thus the latest writer on the subject expresses this opinion most emphatically:[2] "Quelque favorable qu'ait été la situation faite par les Capitulations aux étrangers établis dans l'Empire et si libéral que se fût montré le Gouvernement Ottoman envers eux quant aux droits civils, ils étaient jusqu' à ces derniers temps exclus du droit de propriété immobilière." And, "L'ancien droit musulman, si absolu, si exclusif dans celles de ses prescriptions qui réglaient la distribution et l'usage du sol sacré, du Dar-ul-Islam, défendait naturellement aux mécréants étrangers d'en posséder ou d'en utiliser la monidre parcelle."[3] The quotations from Moslem jurisprudence on which these statements are based do not fully bear

[1] "The number of these customary wakfs is very great in the Ottoman Empire, and it may be said that the greater part of the immovable property is immobilised in this way. . . . In Egypt this system is practised on a vast scale."—Gatteschi, p. 95.

[2] G. Young, "Corps de Droit Ottoman," Oxford, 1905, vol. i. p. 334.

[3] Engelhardt, "La Turquie et le Tanzimat," Paris, 1882, vol. i. p. 211.

out the argument, on the contrary they seem to show that there was nothing in the Sharia itself which prevented a foreigner from becoming a landed proprietor; if there was any prohibition, it was indirect, a foreigner might become owner of Moslem land, but if he did so, it was subject to the same conditions as applied to any Musta'-min, that is to say, he became liable for the Kharâdj and also the poll-tax.[1] The result of this system was to place the foreigner in a position similar to the Rayah, and deprive him of one of the most important privileges granted to him by the Capitulations—immunity from local taxation. This is clearly brought out by a quotation from Baillie,[2] based on several Mohammedan authorities, "If moostamens neglect the warning, and continue their residence beyond the period prescribed by the notice, they become Zimmees on its mere expiration, and liable to the jizyut or poll-tax; after which they can no more leave the territory and return to their own country. The same liabilities are incurred by the purchase of land subject to the Kharaj, or land-tax, which, so soon as it is imposed on a moostamen, has the effect of converting him into a Zimmee." . . . Thus, although it may be argued that there was no direct prohibition on foreigners, it is clear that the indirect result of the acquisition of land was to deprive him, not only of his rights under the Capitulations, but also of his citizenship. The position of a foreign owner, apart from the uncer-

[1] The authorities usually quoted on this subject are:—

"If even the term of one month's sojourn, or more, three months, for instance, had been fixed for the stranger and he exceeds this limit, remains in the country, and there buys a piece of land, he shall be bound to pay the Kharâdj for the land, and the djizyah for his person from the day when he shall have become bound to pay the tribute of the land."—Moultaga el Abhour, Constantinople, A. H., 1252, p. 109.

"If a musta'min buy or cultivate a piece of land, either ushûri or Kharâdji, he is to pay the Kharâdj for the land, and the djizyah for his person; nevertheless, he does not become a zimmee by the act of purchasing the land, but only by that of cultivating it. The Kharâdj of the land carries with it, for the owner, that of the person."—Sharai Kebir, quoted by Bélin, p. 115.

"If a stranger under protection comes into a Moslem country, and there acquires a parcel of land subject to the tribute, so that the tribute is imposed upon him, he becomes a Zimmi, that is to say, a subject; because the tribute upon the land is the substitute of the tax upon the person. . . . Nevertheless, he does not become a Zimmi immediately after acquisition of the land, nor until he commences to pay the tribute; for a foreigner may acquire land for speculation, but by becoming subjected to the tribute he subjects himself also to the personal tax for the following year; for by submitting himself to the tribute he becomes a Zimmi."—Hedaya, ix. 6 p. 197.

[2] Baillie, p. 172.

tainties of Moslem justice, cannot have been enviable, and much trouble must have been caused their Consuls through them; it is not surprising, therefore, to find that European States strictly forbade their subjects acquiring such property: "Sa majesté defend à ses sujets établis dans les échelles du Levant et de la Barbarie d'y acquérir aucun bien fonds et immeuble autre que les maisons,[1] caves, magazins et autres propriétés nécessaires pour leur logement, et pour leurs effets et marchandises, sous peine d'être renvoyés en France. Defend sa Majesté à tous ses sujets de prendre des biens fonds, et autres objets à ferme soit du Grand Seigneur, soit des princes de Barbarie ou le leur sujets, ou de faire des associations avec le fermier, tenancier, et autres, sous peine d'être renvoyés en France."[2] In spite of these prohibitions, and in spite of all the dangers and difficulties incurred, foreigners did become owners, having their estates registered in the name of a Moslem friend, or of some female relation.

At the time of the Congress of Paris the question came into prominence, in connection with, on the one hand, the demand of Turkey for the complete abolition of the Capitulations; and on the other, the demand of the Powers for equality between Christian and Moslem subjects. The Hatti Humayoun[3] dealt with the question:— "Comme des lois qui régissent l'achat, la vente et la possession des propriétés immobilières sont communes à tous les sujets ottomans, il est également permis aux étrangers de posséder des immeubles, en se conformant aux lois du pays et aux règlements de police locale; et en acquittant les mêmes droits que les indigènes, après, toutefois, les arrangements qui auront lieu entre Mon Gouvernement et les Puissances étrangères." But this was to leave the question as it had been before, since foreign owners must pay taxes like subjects and be subject to the local law; nor did the Land Law of 1858 improve matters, since it left mulk to be regulated by the Sharia; negotiations in consequence fell through, and when they were renewed the terms were the same.[4] The French Government reopened the

[1] It is interesting to notice the exception in favour of buildings. It will be remembered that buildings could always be owned in mulk, and that the builder on another's land was the full owner of the building.

[2] Ordonnance, 1781.

[3] Noradounghian, vol. iii. pp. 83, &c. Shopoff, pp. 48, &c. Article 27.

[4] Even if foreigners could have acquired a "tapou" title, their right to their estates would largely depend upon the good influences of the Turkish officials, since without the "title-deed" their position would be valueless in law. We have an example of the position in recent Egyptian history when Abbas I. commanded

question in 1867, with a note from the Minister of Foreign Affairs, advising the adoption of certain measures by the Porte.[1] The free exercise for foreigners of the right to hold real estate. Reform of the system of Wakf lands, and the extension of the system of mulk lands. Reform of the system of securities over land, and the introduction of a system of transmission, offering sufficient guarantees for the acquisition of a good title. The abolition of the prohibition that Moslems should not sell their lands. At the same time the French ambassador demanded the fulfilment of the undertaking given in Article 27 of the Hatti Humayoun. The result of these negotiations was the promulgation of the Law of 16th June 1867, and a number of other laws dealing with the title-deeds of tapou lands and questions of succession.

The Law of 16th June 1867[2] commences with a recital of the cause of its promulgation: "Dans le but de developper la propriété du pays, de mettre fin aux difficultés, aux abus et incertitudes qui se produisent au sujet de l'exercice du droit de propriété par les étrangers dans l'Empire Ottoman. . . ." Foreigners are to be allowed the same rights of ownership as subjects in all parts of the Empire, except in the sacred province of the Hedjaz, "En se soumettant aux lois et réglements qui régissent les sujets ottomans eux-mêmes, comme il est dit ci-après." Foreign owners of immovable property are in consequence assimilated to Ottoman subjects in all that concerns their immovable estate. "The legal effect of this assimilation is:—(1) To oblige them to conform to all laws, and to all police and municipal regulations, which do at present, or which shall in the future, regulate the enjoyment, transmission, alienation, and the hypothecation of such real estate; (2) To pay all taxes or contributions, of whatever character or denomination, affecting, or capable of affecting, urban or rural immovables; (3) To render them directly justiciable by the Ottoman civil courts in regard to all questions relating to immovable estate and in all real actions, whether as plaintiffs or defendants, even when both parties are foreign subjects; and all this on the same

his officials not to issue title-deeds to foreigners who acquired land in Egypt; under Mohammed Aly's legislation foreigners were entitled to acquire such property, but without title-deeds their position would be essentially precarious. There is a strong probability that the same policy was adopted in Turkey in reference to the "tapou."

[1] French Yellow Book, 1867, p. 154.

[2] Young, vol. i. pp. 337 to 341.

title, subject to the same conditions, and in the same forms as Ottoman proprietors, and without that they should be able, in regard to this, to set up their nationality; but subject to the reservation of the immunities attached to their persons and their movable property, under the terms of the treaties." The last article says: "Tout sujet étranger jouira du bénéfice de la présente loi, dès que la Puissance de laquelle il relève aura adhéré aux arrangements proposés par la Sublime Porte pour l'exercice du droit de propriété." A protocol was drawn up and signed by France on 9th June 1868 consenting to these terms.

This Protocol of 1868[1] goes into fuller detail in reference to the different questions involved; the law is not to interfere with the privileges of foreigners in reference to their persons or movable property, nor is the right of inviolability of domicile to be interfered with in any way, the consul or his delegate must be present at the entry of the authorities into the domicile of a foreigner, and domicile is defined: "La maison d'habitation et ses attenances, c'est-a-dire les communs, cours, jardins et enclos contigus, à l'exclusion de toutes les autres parties de la propriété." The position of foreign owners, situated at a distance greater than "nine hours" from the nearest consulate, offered difficulties, and required special treatment; thus when an entry had to be made by the police, the consul was to be represented by "trois membres du Conseil des Anciens de la commune," a procès-verbal of the proceedings being drawn up and sent to the consul; and in these cases the actions were to be heard by the "Conseil des Anciens" without the assistance of the consular dragoman, provided the amount in dispute in a civil action was not more than 1000 piastres, or the fine in a contraventional case was not greater than 500 piastres. These foreigners were always to have the right of appeal to the Court of the Sandjak, where the consul would be in attendance: "L'appel suspendra toujours l'exécution. Dans tous les cas, l'exécution forcée des sentences rendues dans les conditions déterminées plus haut ne pourra avoir lieu sans le concours du Consul ou de son délégué." In a circular of 17th August 1868, addressed to the French consuls, the French ambassador shows himself convinced that the rights of foreigners were fully safeguarded, and that any modifications of the

[1] Young, vol. i. pp. 341 to 345.

privileges formerly granted by the Capitulations were based on reasonable grounds.

The Protocol of 1868 has been accepted by all the important Powers—England's adherence being given on 28th July 1868. According to the most recent authority on the subject the expectations of improvement based on this Law and Protocol have not been fulfilled.[1] "Il faut admettre que les capitaux étrangers ont peu profité des facilités accordées par cette loi à l'acquisition étrangère des immeubles dans l'Empire. Cela tient au peu de sécurité que leur laisse ses dispositions en les assimilant aux sujets Ottomans quant aux charges affectant leurs immeubles, la juridiction dans les questions y afférentes et les droits de transmission, aliénation, &c. Or, privé, par cette disposition de l'appui de son Consulat, le propriétaire étranger se perd facilement dans l'extrême complication du système fiscal, de la législation immobilière et du droit successoral." No better statement could be made of the legal position in Turkey; it is one thing to give a person a right, but it is a very different thing for him to obtain the enjoyment of that right.

The history of the Land Law in Egypt[2] is very greatly complicated by the number of times the country has been conquered, and by the number of different races which have, for a time, made it their home. On the conquest of Egypt by the Arabs in 641 the country came under Moslem rule. At first the elected Khalifs, who succeeded Omar, watched their governors with a jealous eye; and under the Omayad and Abbasside dynasties the same strict surveillance was maintained, the governors being changed almost every year. When, however, the centre of Moslem government was changed from Damascus to Bagdad, the governors acquired greater freedom, and some, such as Ibn Tulun and Mohammed el Ikhshid,[3] acquired absolute independence. Then, in 975, followed one of the most important conquests, that of the Fatimites, who were Shiite; this dynasty was in its turn conquered in 1171 by Saladin, who was a Sun-

[1] Young, vol. i. p. 336.

[2] It seems more appropriate to deal with the question of landed property in Egypt in this chapter than to postpone it to the chapter discussing the Capitulations in Egypt. The subject has been treated by Gatteschi in a pamphlet, "Della Proprietá Fondiaria," Alexandria, 1869, and in a series of lectures of Yacoub Pasha Artin, an English translation of which has been made by Mr. Van Dyck, "The Right of Landed Property in Egypt," London, 1885; the Report of Boutros-Pasha Ghali is also of interest, Gélat, suppt., 1889, pp. 117 to 127.

[3] Ibn Tulun, 868 to 883. Mohammed el Ikhshid, 935 to 965.

nite; in 1240 the Mameluke dynasty commenced; in 1517 Egypt was conquered by Turkey, and in 1841 the dynasty of Mohammed Aly was fully recognised by Ottoman firman. Thus Egypt was ruled by one set of foreign conquerors after another, rulers who did not always know the language and the customs of the country; nor was this all, for although all these conquerors were Moslems, they did not all belong to the same orthodox school, and in one case the rulers were heterodox Shiahs. The Omayads and Abbassides were orthodox Hanafites; the Fatimites were heterodox; Saladin was orthodox but Sunnite; Beybers ordered the four orthodox schools to be officially recognised, and appointed four supreme judges in Egypt, one from each school; the Ottoman sultans were Hanafite, and re-established the supremacy of their own rite, but the Mamelukes of the seventeenth and eighteenth centuries acquired practical independence and frequently refused to consult the official Hanafite judge, preferring to consult the Sheikh el Azhar, who was of the Shafiite school, and they even re-established the four supreme judges as in Bebers' time; lastly, Mohammed Aly finally re-established the supremacy of the Hanafite rite, the supreme judge being appointed by the Porte, and the Kadis of the Mehkemehs by Mohammed Aly, from among the Hanafite jurists.

In regard to the first conquest it is clear that the inhabitants of Egypt remained Christians, and were allowed to retain possession of their lands;[1] thus, as the land was watered by the "water of the kharâdj," the land of Egypt became Kharâdji, and since no land was reserved to the conquerors there was no ushûri land. Beyond this there is little that is clear. In the first place, it is not known to which of the two classes of Kharâdji land the land of Egypt belonged; and secondly, there appears to have always been something exceptional in the nature of land tenure in Egypt. Thus Artin Pasha writes:[2] "The right of property in Egypt was constituted on bases altogether different from those of other countries conquered by

[1] Butler, "The Arab Conquest of Egypt," p. 321, "Under the first article (of the treaty of Alexandria) a general security was given for the life, property, and churches of the Egyptians, who were also to be allowed the free exercise of their religion. For the payment of tribute and taxes constituted them a protected people (ahl adh dhimmah), with a status implying these privileges. The tribute was fixed at two dinârs per head for all except very old men and children, and the total capitation-tax was found to amount to 12,000,000 dinars, or about £6,000,000; but in addition to the capitation-tax, a land-tax or property-tax was imposed." Note to p. 321. "The land-tax was at first payable in kind. . . ."

[2] Artin Pasha, p. 38.

Islamic arms. The law, the Sharia, was sought to define this constitution; but the traditions left us by the fathers of the four orthodox Rites, about the second century of the Hegirah era, present such great divergencies that it is impossible for us to make them agree." The points of special interest, which result from the consideration of the statements made by these different authorities, are that the ultimate right of proprietas is in the sovereign, while the inhabitants of a province enjoy an undivided usufructuary right over the land of the province, being jointly and severally liable for the taxes due by the province, the lands themselves being allotted yearly for cultivation among the inhabitants of the province.[1] His Excellency's researches go back to Roman and præ-Roman times, and show that the proprietas of the land was even then in the hands of the state, and that the Arabs did nothing to change the existing state of affairs. Commenting on a long quotation from Ibn 'Abd el Hâkim, His Excellency sums up the position as follows: "It appears clearly from this passage that the right of real property, as we understand it, did not exist in Egypt, and we see that, from the time of the conquest itself, the inhabitant of the country, the Egyptian, the cultivator, did not possess the substance of the land, which belongs to the commune, and by extension to the sovereign, that is to say, to the State."

The ordinary tenure of the land in Egypt was thus a system by which the proprietas was in the state, while the use and enjoyment were in the people of the different communes; there was, however, by the side of this an exceptional tenure similar, if not the same as, the grants of "iqtaa" already mentioned in reference to Turkish law. At the time of the Arab conquest there was a certain amount of land in the hands of the Romans; this was confiscated by the Khalif Omar, and granted, in accordance with the Sharia, to the Arab soldiery. The land thus confiscated was Emîriah or state land, and according to the Sharia grants of such land may be made as a reward for services, the grant being personal to the grantee and purely temporary. The Omayad and Abbasside Khalifs followed the same practice, but according to Artin Pasha, the grantee received the iqtaa in mulk, free from taxation and transmissible to his heirs.

[1] *Cf.* Sir Henry Maine, "Early Institutions," especially the land holdings of Ireland, Germany, England and the Highlands of Scotland there discussed, especially in Lecture IV. and page 101 (sixth edition).

This was a most important extension of the Sharia, but appears to have been adopted as the general practice; thus on the conquest of Egypt by the Turks, the Sultan Selim confiscated the lands of the Mamelukes and granted them to his soldiers and to his Egyptian partizans; these grants were called *Rizqua*, but were the same as the extended form of iqtaa, that is to say, the grantee was owner, with a right transmissible to his heirs, and was exempt from taxation.

A third form of tenure grew up under the Mamelukes. For some time after the conquest the Turkish governors were able to maintain Turkish control over the new province, but during the seventeenth century the influence of the central government lessened, while the true authority was gradually concentrated in the hands of the principal Mamelukes. The Turkish governor ceased to have any power, and the true ruler of Egypt was the principal Mameluke, who was called the Sheikh el Belad. "Stripped of its products and of its gold by Constantinople, impoverished by continual internecine wars between the Mamelukes, by the absolute want of security, and by the falling off of the trade with the far East, which had taken the route of the Cape, Egypt found all its institutions shattered, and more especially those relating to real property; which had depreciated, seeing that the public works were wholly neglected, and that anarchy reigned everywhere, so that the tilling of the lands was abandoned by a people, who lay at the mercy of their arbitrary masters."[1] Such were the conditions under which the system of "iltizâms" came into existence; the system was connected with the farming of the land-tax. The right to farm the land-tax of a district was put up to auction by the Rouznâmah (the State Chancery), and the highest bidder, who was called the Moultazim, on paying the rental of the right for one year in advance, received a taxît or commission from the Sheikh el Belad entitling him to collect all the taxes in the district assigned to him. The Moultazim then proceeded to realise the sum he had advanced, with interest. "Theoretically, or rather as a question of principle, the State had to aid the Moultazim in realising the advance made by him; but in times of continued trouble, such as those through which Egypt passed during the seventeenth and eighteenth centuries, the Moultazim was, as a matter of fact, left

[1] Artin Pasha, p. 47.

to himself, and he could thus deal as hardly as he liked with the peasant, who, having no way of redress against the oppressor, could only hope that another and more powerful Moultazim would succeed in ousting the first."[1] In addition to this the Moultazim of a district received a gift of a certain part of the land of his district; these grants were called "oussiah," and were exempt from the payment of taxes, and the Moultazim could have them cultivated by corvée or forced labour. Theoretically the iltizâm was not hereditary, but if the Moultazim could continue to obtain the renewal of his right until his son was old enough to take it over from him, the son could substitute himself for his father, provided he paid the yearly advance to the state.

Mohammed Aly's reforms were radical. "In 1813 a cadastral survey of the whole country was commenced, the lands were classified, and those which were under cultivation or were capable of being cultivated were registered in the name of their respective communes, and a tax laid on them according to their quality. All lands incapable of cultivation were excluded from the cadastre and called Abadiah lands."[2] This may be taken as the main principle in Mohammed Aly's reform, but incidentally he dealt with all the then existing systems of land tenure. In regard to the Rizqua lands, which were technically exempt from taxation, he respected the grants in so far as they existed at the time, but made the owners liable to pay the Kharâdj tax, granting the then possessors an indemnity, called fâyiz, which ceased on their death, so that, by the time of Saïd Pasha, Rizqua had ceased to exist and had become assimilated in every respect to Kharâdji land. The system of iltizâm was entirely abolished, and it appears to have been Mohammed Aly's original policy to eventually distribute the "oussiah" lands among the cultivators as Kharâdji lands. He, however, recognised that moultazims had a certain right to this land in compensation for the advances made by them; he, therefore, granted them a usufructuary right over the land during their lives and also a fâyiz, which consisted in a rent charge payable out of the land. These rights were to come to an end on the death of the Moultazim, but, unfortunately,

[1] Artin Pasha, p. 49.

[2] Report of Boutros Pasha Ghali. See the Finance Ministry collection, "La législation en matière immobilière en Egypte," Cairo, 1901, pp. 10 and 11, also in Gélat, supplement, 1889, pp. 115 to 127.

Mohammed Aly's scheme was defeated by the creation by the Moultazims of family wakfs over these lands, which had the effect of withdrawing the oussiah lands from the power of the Pasha and conserving the interests of the Moultazim's family. The scheme was in consequence changed and a Decree promulgated giving the holders of oussiah lands the right to transfer it to their heirs until the final extinction of the family, when the land reverted to the state, which granted it to the cultivators as Kharâdji land. The lands could only be transferred by succession, and only within the family.

The whole system of land tenure was thus placed on a new footing, and these exceptional tenures were bound to come to an end within a certain time. The remainder of the land was Kharâdji or Abadiah, land included in the cadastre as fit for cultivation, or land not so included. Mohammed Aly's next step was to try and bring this waste land, Abadiah land, under cultivation. By the Sharia the sovereign has the right to make grants of all unoccupied land; in virtue of this right Mohammed Aly made grants of Abadiah land to the notables of the country and to his chief officials, who were in a position to undertake the expense of bringing the lands under cultivation. With the increasing prosperity of the country these grants became very valuable, for once the land was cleared and cultivated it increased greatly in value, owing to the revenue it brought in and to the fact that it was exempt from taxation. In 1836 a Decree was promulgated allowing these grantees to have a right similar to the Rizqua tenure, and transmissible to their heirs. This, however, was repealed by a Decree of 1842, which gave the grantees a right of ownership over the land with full rights of alienation, the title being guaranteed by a taxît issued by the Rouznâmah. So far Abadiah lands had been exempt from all taxes; but by a Decree of 1854 Saïd Pasha ordained that they should in future pay a tax equal to one-tenth of their produce. The amount and nature of this tax on Abadiah lands has led to the mistake of calling them Ushûri lands. They have no right to this title, since they are essentially Kharâdji lands, which cannot be transformed into Ushûri lands in this manner: it would be more correct to describe them as Kharâdj Moukâsamah with an exceptionally favourable tax;[1] but the best position is simply to accept the exceptional character of the tenure,

[1] The Decree of 1858 calls them "non-Kharâdji lands."

for, after all, the whole Egyptian system of land tenure is essentially exceptional. Boutros Pasha Ghali, in mentioning this tax, gives the following reason for its imposition: "Cet ordre est basé sur les motifs que les ponts, digues, canaux, etc., que le Gouvernement a fait et fera et qui sont entretenus à ses frais, profitent non seulement aux terres Kharâdji, mais à toutes les terres en général."

There are two other classes of land which have been classified with Abadiah lands. In the first place, when Mohammed Aly undertook the survey of Egypt he divided the country into administrative divisions, moudiriahs, markazes and nâhiahs, appointing administrative and executive officers in each, as well as official tax gatherers. Among these officials were the omdahs and Sheikhs el Belad, who were obliged to entertain officials when travelling in the districts. As a return for these services they received grants of land free from taxation; these were, however, distributed among the cultivators in 1858, who held them as Kharâdji.[1] The other class of lands were what were called Tchifliks, "which were concessions of large quantities of land assimilated to Abadiah by the Decree of 1842. They were given to the vice-royal family exclusively. Under Abbas Pasha, the Government conceded some to certain high officials of the State."[2]

All other lands were Kharâdji.[3] These Kharâdji lands were the lands included within his cadastre by Mohammed Aly in 1813, and which were registered in the names of the communes and distributed among the able-bodied cultivators of their district. The proprietas was in the state, but the cultivator had a right of use and enjoyment. Apparently there was no hereditary right; the question of succession to the rights of a deceased cultivator was left to the discretion of the Sheikh el Belad of the district. It should also be noted that the "Commune" was responsible for the arrears of taxes due from one

[1] In practice the Sheikhs el Belad copied the practice of the Moultazim and had these lands cultivated by corvée, or the forced labour of the cultivators of their district.

[2] Boutros Pasha Ghali's Report, Gélat, Supplement, 1889, pp. 115 to 127.

[3] Artin Pasha, p. 59, calls these Kharâdji lands Athariah lands. "Athariah comes from the word athr in the singular, and âthâr in the plural, meaning vestige, trace, remembrance. In general these lands passed from father to son, without, however, being constituted into estates transmissible by inheritance. Hence their designation as usufructuary property, by way of family remembrance or tradition, or as left to the sons in memory of the father, or else a trace or vestige of the passage of the father over the lands held by the son."

of its members, and that there was a joint and several liability as between the different communes throughout Egypt. The first reform was a law of 1846, which gave the cultivator the right to pledge his land in "Garuka," or to alienate it either verbally before witnesses or by means of a written deed or hodget. There was no period of prescription, so that a holder of land who left the district, but afterwards returned, could have the then possessor dispossessed and himself put in possession again; and similarly a holder who had been dispossessed for inability to pay the taxes might at any subsequent time re-acquire possession by paying the arrears due by him. This law was modified in 1854; a period of prescription of fifteen years was established, after which date all claims to land lapsed. A cultivator, however, who had left the district, but subsequently returned, was always entitled to claim from the Sheikh el Belad a new grant of sufficient land to support him; and all alienations were in future to be made through the mudir by hodget, and the succession of male heirs was established.[1] The rights of the cultivator were thus very greatly improved; he held an official title deed, and had the right of alienation, while his male heirs had a right to succeed to him; but, above all, he was much less dependent upon his Sheikh el Belad, who, although under the control of the mudir or governor of the province, had many opportunities of exercising a vexatious tyranny over the members of his district.[2]

The principal characteristic of the next laws promulgated was to emphasise still more the individual right of the holder, and to lessen the communal nature of the tenancy; the state, however, still continued to reserve to itself the right of proprietas over all Kharâdji lands. The Land Law of Saïd Pasha of 1858, amended in 1875, is by far the most important of these laws. Its chief enactments are:—The right to transfer Kharâdji lands by succession to the heirs of the holder, without distinction of sex, and according to shares allowed by Mohammedan law; the right of any person, male or female, who shall have had possession of Kharâdji lands for a period not less than

[1] Female heirs were entitled to apply for a part of the land of their ancestor, but, in order that their application should be entertained, they had to prove that the possession of the land was necessary to their support; they required to give security for the due payment of all taxes, and the land was taken from them as soon as they found other means of existence.

[2] Lord Dufferin, in his Report on Egypt in 1883, draws up a very strong indictment against the Sheikhs el Belad.

five years, and who shall have regularly paid all taxes due, to become the indisputable possessor of such lands, so that no claim or action can be validly made against them; the right to pledge the lands in Garuka or grant hypothecs over them, or to let them, provided the lease is for a term not greater than three years; the right of full ownership conceded to all holders of Kharâdji land who shall have planted trees, or made a sakieh or any other construction on such lands. There are also regulations for compensation in the event of expropriation by the state of any Kharâdji lands, the form of compensation usually being the grant of Abadiah lands to replace the land taken; and also regulations for the lands carried away by the floods, or for lands created by the deposit of the Nile. A Law of 1865 regulates abuses of the district Mehkemeh Courts in reference to the improper issue of hodgets; and a Law of 1866 allows succession by will, in accordance with the rules of Mohammedan Law, to Kharâdji lands.[1]

The first Law of the Moukâbalah was promulgated in 1871. This law was in reality one of the many devices resorted to by Ismaïl Pasha in order to obtain fresh supplies of money. It was in the nature of a contract, whereby Ismaïl undertook to reduce, by 50 per cent., for all time the taxes of those owners who should on their side undertake either to pay at one time and in advance a sum equal to the amount of six years' taxes due by them, or to pay the same sum by annuity; in the latter case, however, the reduction was not so great, but was regulated by a scale of relief based on the amount of the annuity. The landowners did not respond, and the law therefore became compulsory in 1874. According to the new law every proprietor was obliged to pay, in equal portions

[1] There are also enactments which bring out certain characteristics of family rights rather than individual rights in the land. The Land Law of 1858 ordered the division of the estate among the heirs of the deceased owner, each having his individual title to his share registered in his own name; but the eldest of the family was entitled to constitute himself mandatory for the family, and decide whether the estate could be profitably cultivated, or whether it was not better to resign it to the state. In this way the rights of the younger members were often prejudiced, and by a decision of the Meglis el Ahkam, which was the Native Court before its reform in 1883, the younger children were given five years from the time of their majority in which to protest against the resignation of their right. By a Decree of 1869 the law was again modified, and the whole estate was registered in the name of the eldest son, on the condition that the revenue was divided among the family according to their shares. Registration is now in the name of each heir according to his share.

and during the course of twelve years, a sur tax amounting to 50 per cent. of the taxes then existing, and the land-tax had, in the interval, been increased, first by one-tenth, and then again by one-sixth; in return the Government undertook never again to increase the land-tax, and to grant a right of full ownership in their lands to all those who paid the advance. Owners of Abadiah and Oussiah lands who paid the advance were to be assimilated to owners of Ushûri lands. The Law of the Moukâbalah was repealed by the Law of Liquidation of 1880 and a Khedivial Decree of the same year;[1] the land-tax was reduced to the amount at which it stood in 1871; but all persons who had paid, even in part only, the Moukâbalah advance were confirmed in their title of ownership, and an annual sum of £E150,000 was set aside for the purpose of indemnifying them by yearly payments for forty years.

As a result of the Moukâbalah and the laws repealing it, certain holders of land had acquired the right of full ownership over such property. The tenure of land was, however, of two kinds—Ushûri paying a tax of one-tenth of the produce, and Kharâdji paying the land-tax as it stood in 1871. Apart from this question of taxation, however, there was very little difference in the nature of the rights of the respective owners. Thus Artin Pasha,[2] summing up the position of land tenure as it existed in 1880, says: "The only difference between the lands paying the tithe and those paying the Kharâdj is that the former can be made wakf without any authorisation of the Ruler, whereas the land paying the Kharâdj cannot be turned into wakf until after obtaining a special authorisation from the Khedive." What remains to be told of the history of Egyptian Land Tenure is simple. By a Khedivial Decree of 15th April 1891,[3] the owners of Kharâdji land who had not paid the

[1] Law of 6th January 1880, abrogating the Moukâbalah.

Art. 3. Toutes les dispositions de ladite loi relatives à l'acquisition de la propriété de terrains par les personnes ayant payé la Moukâbalah, sont maintenues. Le payement même partial du dit impôt suffit pour donner droit à la pleine propriété des dits terrains.

Art. 6. Toutes les lois antérieures et contraires aux prescriptions du présent décret sont abrogées.

The Law of Liquidation, 17th July 1880.

Art. 87. La loi de la Moukâbalah, rapportée par notre décret du 6 janvier 1880, est et demeure définitivement abrogée, sous les réserves contenues dans l'art 5 du dit décret.

[2] Artin Pasha, p. 70.

[3] Decree of 15th April 1891.

Art. 1. A partir de ce jour, les propriétaires des terres Kharadji sur lesquelles la Moukâbalah n'a pas été payée, auront la pleine propriété de leurs terres à l'égal des propriétaires ayant payé tout ou partir de la Moukâbalah.

Moukâbalah were granted a right of full ownership over their property in every way similar to the right of those owners who had paid. And, by a decree of 3rd September 1896,[1] the sixth article of the Native Civil Code was amended, and all distinction between Ushûri and Kharâdji lands was abolished, owners of all lands, of whatever category, being henceforth entitled to the full right of mulk.

The position of foreigners who wished to acquire landed estate in Egypt was, during the nineteenth century, very much more favourable than that of foreigners in Turkey. The policy of Mohammed Aly was to attract Europeans to Egypt, and many foreigners received grants of Abadiah lands from him on the same terms as those made to Egyptians—that is to say, in full ownership and free from taxation. Thus the difficulties which had arisen in Turkey were avoided. Abbas I. was not so enlightened in his policy, and during his reign strict orders were given to the Kadis not to issue any hodgets to foreigners who might purchase lands or houses. Saïd Pasha, by a Decree of 1858, put up for sale Kharâdji lands which had been abandoned by their owners, and allowed foreigners to compete in their purchase, the purchaser receiving a taxît from the Rouznâmah, which was the same title as that given in the case of Abadiah lands; and, by a Decree of 1861, foreigners were authorised to possess Kharâdji lands "in order to establish thereon cotton-ginning machinery." Foreign possessors of Kharâdji lands could not become full owners thereof since the government reserved its right to the proprietas, but, apart from that, with the full rights of alienation given by the Land Law of Saïd Pasha, the foreign possessors of Kharâdji were virtually owners thereof. Thus, before the Law of 1867, ownership by foreigners over landed estate had been fully recognised in Egypt. The Law of 1867 applies to Egypt, but in practice the restrictions placed on owners in Turkey do not exist in Egypt, another example of the

[1] Original text of art. 6 of the Native Civil Code.

"On appelle biens mulk ceux sur les quels des particuliers ont un droit entier de propriété.

Les terres Kharadji sur les quelles les propriétaires ont acquitté la Moukâbalah sont assimilées aux biens milles, conformément à la loi sur la Moukâbalah et au décret du 6 janvier 1880."

Present form of article 6.

"On appelle biens mulk ceux sur les quels les particuliers ont un droit entier de propriété, y compris les terres Kharadjis."

increased privileges enjoyed by foreigners in Egypt.[1] Thus the definition of "domicile" is very much wider in Egypt than is stated in the Law of 1867. In accordance with that law domicile includes "la maison d'habitation, et ses attenances, communs, cours, jardins et enclos contigus;" while in Egypt it also includes any place where a foreigner exercises his commerce, industry, art or profession. In regard to jurisdiction, the Consular Courts before 1867 claimed the same rights of jurisdiction in reference to cases concerning immovable property as they did in regard to other civil cases to which their subjects might be parties; and on the establishment of the Mixed Courts in 1876 all disputes with reference to immovables between foreigners and natives, between foreigners of different nationalities, or between foreigners of the same nationality were placed within the competence of these international tribunals. Nor do the rules as to the special position of foreign owners living more than nine hours from their consulate apply in Egypt; and, lastly, it has been the invariable practice of the Egyptian Government to submit any new law, intended to affect landowners, to the Powers for their approval before making it applicable to foreigners in Egypt; the Mixed Courts have, however, decided that all local Police Regulations relative to land apply to foreigners.[2] Thus all forms of land in Egypt may "become the absolute real property of the acquirer, be he Egyptian or Foreigner, Moslem or Christian."[3]

[1] The application of the Law of 1867 to Egypt raises a question of vital importance in reference to the intestate succession of a British proprietor of real estate situated in Egypt. The law provides that the foreign proprietor of real estate shall have power to dispose of it freely by will or gift, and that his intestate succession in reference to such property shall be regulated "conformément à la loi ottomane." In 1884, on the death of a Maltese—Xuereff—owning real estate in Egypt, there was a considerable difference of opinion among the authorities interested as to the law to be applied and the Court competent; and in 1887 a report was presented to the Foreign Office, but no action was taken. The question was again raised in 1907 in reference to the intestate succession of Dr. Torrie Grant, a domiciled Scotsman, leaving real estate in Egypt. The Supreme Consular Court at Constantinople decided that "the immovable estate in Egypt of a British subject devolves upon his death, intestate, in accordance with the Moslem Law as the *lex rei sitæ*." The decision is based on the argument that the "Ottoman Law" in this case is the Mixed Civil Code, Art. 77 of which says: "Successions are regulated according to the laws of the nation to which the deceased belongs;" and according to the English Law it is the *lex loci* which regulates the succession to real estate situated abroad, and as the Egyptian Codes do not deal with successions the *lex loei* is the Moslem Law. This decision has met with considerable criticism.

[2] Alexandria, 25th February 1887; B. L. J. 1887, p. 116.

[3] Artin Pasha, p. 70.

CHAPTER XII

EGYPT AND TURKEY: THE FIRMANS AND BRITISH OCCUPATION

THE history of the Tanzimat in Turkey had a very direct influence upon the Capitulations. There were many reforms which did not influence foreigners directly or indirectly, such as those of education, but there were also many others which had a very direct relation to foreigners, and which are, therefore, of interest in the consideration of the Capitulations. Among the latter are the institution of mixed courts, the promulgation of codes, the laws of protection and nationality, and the law granting the right to hold immovable property. The organisation of the different religious communities is also a question which touches on our subject. Such reforms as these had their influence on Egypt as well as in other provinces of the Ottoman Empire; but about the date of 1867 the relations between Turkey and Egypt became such that we are able to leave the rather thorny path of Turkish reform at the stage then arrived at. In spite of the self-denying ordinance agreed to in the Treaty of Paris, 1856, the European Powers have continued, and still continue, to intervene in the internal affairs of the Ottoman Empire; reforms are from time to time agreed on, after long and arduous negotiations, but unfortunately these reforms have seldom proved of any very permanent value. Fortunately the history of reform in Egypt has been more successful, and we may now begin to trace their history and consider its influence upon the original Capitulations.

One of the most important influences in the prosperity of Egypt, both in the past and at the present time, is geographical. Situated in the direct line taken by the trade between Europe and the far East, Egypt's prosperity has been closely connected with the history of that trade. During the prosperous days of the Roman Empire, and under the rule of the Sultans from Saladin in 1171 to El Ghuri in 1516, this trade between East and West prospered, and Egypt

prospered with it. The discovery of the Cape of Good Hope and the development of that route to the East struck a blow at the older route by the Red Sea, and Egypt's prosperity dwindled. Egypt, deprived of her greatest source of revenue, lost power and became a province of the Ottoman Empire in 1517. The country was divided into twenty-four districts governed by Mameluke Beys, who were, in turn, under the authority of a Turkish Pasha, whose principal duty was to insure the punctual payment of the annual tribute. At first the authority of the Pasha was very real, but as Turkey became more and more involved in her struggles against European intervention, the central government had little time to spare for the consideration of her interests in Egypt. The authority of the Pasha, unsupported by his central government, declined, and that of the twenty-four Mameluke Beys, under the chief Mameluke or Sheikh el Belad, increased; thus, before passing any new measure, the Pasha was obliged to consult the Mameluke Beys, who collected the taxes, commanded the army, and merely handed over the tribute to the Pasha. Towards the end of the eighteenth century Egypt was, for all practical purposes, again independent of Turkey. It was at that moment that Napoleon came to Egypt, and the eyes of the whole of Europe were once more turned to the valley of the Nile.

Napoleon landed at Alexandria in 1798 with the intention, it has been said, of marching from there to the Persian Gulf, there to set sail once more and strike a blow at the rising power of England in India. "If they pass Sicily," writes Nelson in June 1798, "I shall believe they are going on their scheme to possess Alexandria and getting troops to India, a plan concerted with Tippoo Sahib, by no means so difficult as might be imagined." We are not here concerned with the great political or military schemes of Napoleon. The result of his landing in Egypt was to revive European interest in that country, and soon there was an "Egyptian Question" distinct from the "Turkish Question." The interest then revived has never since been allowed to wane.

The French left Egypt in 1801, and the English army evacuated Alexandria in 1803; but one of the indirect results of Napoleon's invasion of Egypt had been the arrival of Mohammed Aly. Very little of the early history of Mohammed Aly is known, except that he was born in 1769 "in Kavala, a small seaport on the frontier

between Thrace and Macedonia, not far from the site of Philippi." He was of humble origin, but was adopted by the village mayor, married his daughter, and to the age of thirty lived the uneventful life of a trader in tobacco. But, on the French invasion of Egypt, Mohammed Aly was given a commission in the Turkish army which was defeated by Napoleon at Aboukir, to return again in 1801. By 1805 Mohammed Aly had usurped the power of the Turkish Pasha in Egypt, had been elected Pasha by the Sheikhs, and was in possession of the citadel at Cairo. By 1811 he had broken the power of the Mamelukes, and in that year the last of the Mamelukes were massacred. The next thirty years of the history of Mohammed Aly are full of interest and romance. At one time we find him undertaking arduous expeditions in the service of the Sultan, a loyal servant acting against a rebel army; while at others he is himself the rebel threatening the very throne of the Sultan. The territories of Egypt were greatly enlarged. Thus in 1820 the Sudan was conquered, and the great trade route of the Nile was opened up beyond Khartoum and along the Blue and White Niles to the very centre of Africa. At the same time everything possible was done to re-open the old commerce to the East by Suez and the Red Sea. Europeans were invited to the country, and merchants and consuls were bribed to stay there, now by an antiquarian concession, now by a trade monopoly, and sometimes even by a further concession in reference to the privileges of the Capitulations. In every manner possible Europeans were attracted to Egypt; and the groundwork of Egyptian policy was to gain by one means or another the good favour of the European Powers.

The crisis in Mohammed Aly's career was his conquest of Syria from 1832 to 1839. At first all went well, and if only he could have governed the conquered territories properly, he might have been allowed to retain them. But his failure in this led to the intervention, both military and diplomatic, of the European Powers. The military intervention culminated in the siege of Acre, and the diplomatic in the Convention of London, 1840.[1] As a result of the Convention of London and the negotiations which followed, the Sultan was obliged to recognise the position of fact created in Egypt. Mohammed Aly had to give up his wide ambitions, but his position

[1] Recueil des Décrets et Documents officiels intéressant le Ministère de la Justice, pp. 187 to 200, also pp. 206 to 216.

in Egypt was legally recognised and made secure for himself and his descendants. The negotiations show the Sultan to have acted unwillingly and under compulsion. His position was natural; a ruler of one of his provinces had rebelled, but was once more under his power, and it was hard not to satisfy revenge. But the rebel had only been conquered by the intervention of foreign Powers, and these Powers insisted on having their wishes complied with. The result was the Firman of 1841.[1] This Firman and the others which followed it define the relations of Egypt and Turkey; this relationship came into existence as the result of the intervention of the European Powers, who have, in consequence, always insisted that these relations cannot be altered without their consent. In other words, the relationship which exists between Turkey and Egypt is not a question which interests the parties alone, but is one in which the European Powers claim to have a personal interest. Examples of this claim[2] made by the European Powers are given by the diplomatic questions raised in regard to the interpretation of clauses in the Firmans of 1866, of 7th August 1879, and of 27th March 1892. The position claimed by the Powers is best summed up in the words used by Lord Cromer in reference to the discussion upon the last of these Firmans: "Your Excellency is aware," he writes to Tigrane Pasha in April 1892, "that

[1] The different Firmans are:—

1. 13th February 1841, pp. 200-204; 2. 13th February 1841, pp. 204-206 (Firmans proposed by Porte); 3. 1st June 1841, pp. 216-220 (actually sent); 4. May 1841, p. 220 (fixing the tribute)—in favour of Mohammed Aly. Recueil des Décrets, &c. 5. 27th May 1866, pp. 221-223; 6. 15th June 1866, pp. 223-225; 7. 6th June 1867, pp. 225-226; 8. 29th November, 1869, pp. 226-228; 9. 10th September 1872, pp. 228-229; 10. 25th September 1872, p. 230 (authorising Khedive to borrow); 11. 8th June 1873, pp. 230-235; 12. 1st July 1875, pp. 235-236 — in favour of Ismail Pasha. Recueil des Décrets, &c. 13. 7th August 1879, pp. 236-239—in favour of the Khedive Tewfik. Recueil des Décrets, &c. 14. 27th March 1892, pp. 242-244—in favour of the Khedive Abbas Hilmi. Recueil des Décrets, &c.

[2] The Firman of 1866, changing title of the Governors of Egypt from Pasha to Khedive, and making it hereditary according to the rules of primogeniture, was submitted to the Powers.

A question arose in the Firman of 1879 in reference to the clause granting the Egyptian Government Power to enter into Commercial Conventions. Recueil des Décrets, pp. 239 to 241.

Discussion as to the extent of Egyptian territory in reference to the Firman of 1892. Recueil des Décrets, pp. 245 to 253. This correspondence is of importance in reference to the recent question as to the Eastern frontier of Egypt.

no alteration can be made in the Firmans regulating the relations between the Sublime Porte and Egypt without the consent of Her Britannic Majesty's Government."[1] The Egyptian Firmans are thus a part of European International Law.

The Imperial Firman of Investiture in favour of Mohammed Aly, 1st June 1841, accepts the submission of Mohammed Aly, and appoints him Pasha of Egypt. The other clauses deal with the following points:—The title of Pasha of Egypt is to descend to the successors of Mohammed Aly according to the rules of Ottoman Law; taxes are to be collected in the Sultan's name; money may be coined in Egypt, but it must be exactly similar to the Turkish coinage; the army is to be limited to 18,000 men, and may only be increased by the consent of the Porte; it is to form a part of the Ottoman army, and its organisation is to be the same as that of the Turkish army; the Pasha cannot construct war-ships without the consent of the Porte; the Pasha may make military appointments to the rank of colonel, but all other appointments are to be made by the Sultan; Ottoman Law is to be applicable to Egypt. The clause regulating this last point is of such importance that it is necessary to quote it in full: "The system of the security of the person and of property and of the protection of the individual honour and character, of which the principles are consecrated by the reforms instituted by the Hatti Sherif, promulgated at Gulhana, and all treaties, whether existing or hereafter to be entered into, with friendly Powers, are to receive their application in Egypt. So equally are all regulations, existing or hereafter to be made by the Sublime Porte, allowance being made for local conditions, of justice and equity." The sanction of the Firman is to be the cancellation of the right of heredity. A Firman of May 1841 had fixed the tribute payable by Egypt to Turkey at the sum of 80,000 purses, or £376,000.

The result of this first Firman was to unite Egypt to Turkey in a closer relationship than had existed in fact for a very considerable time. Egypt undoubtedly was, in every sense, a Province of the Ottoman Empire. One of the great aims of the Pasha Ismaïl was to obtain for himself and his successors a greater freedom from Turkey,

[1] "Sir Evelyn Baring, Minister Plenipotentiary, Agent and Consul-General of Her Britannic Majesty, to His Excellency Tigrane Pasha, C.B., Minister for Foreign Affairs, Cairo," 13th April 1892. Recueil des Décrets, pp. 248 to 250.

and one of the causes of his great indebtedness was the result of his attempts to purchase a larger autonomy. Thus in the Firman of 27th May 1866, in consideration of an increase in the tribute to a sum of 150,000 purses, or £675,000, the succession was to be in accordance with the rules of primogeniture, the territories of Egypt were extended, the army might be increased to 30,000 men, the restrictions in regard to coinage were modified, and the Pasha was allowed to make civil appointments up to the grade of Saniah. The Firman granted to Ismaïl on 8th June 1867 is of special interest, as it not only grants the title of Khedive to Ismaïl and his successors, but also deals with the question of Ottoman Law and the power of Egypt to make treaties. "My Imperial Firman," of 1st June 1841, "stipulates that the organic laws in force in the different parts of my Empire shall be enforced and applied in Egypt in conformity with justice and equity and taking into consideration the customs and character of the inhabitants. But by organic laws is meant the general principles set forth in the Chart of Gulhana (guarantee of life, property and honour). The interior administration of Egypt, and in consequence the financial, material, and other interests of the country having been confided to the government of the Vice-Roy, it has seemed necessary to accord permission to the Egyptian Government to make all those regulations or institutions, which it considers necessary for this purpose, in the form of special acts of interior administration. All the treaties signed by my Imperial Government shall be, as always, executory in Egypt. But the Khedive has full authority to conclude, with foreign agents, special conventions relating to customs, to questions of police in reference to foreign subjects, to the transport and direction of the post. Only these conventions shall not be promulgated in any manner after the form of treaties or of political conventions. In the event of these acts not being in conformity with the lines above mentioned, and where they interfere with my territorial sovereignty, they shall be considered as null and void . . ."

The result of these Firmans granted to Ismaïl was, undoubtedly, to extend the autonomy of Egypt far beyond what had been contemplated in 1841. Ismaïl's financial difficulties could not, however, pass unnoticed by the Ottoman Government, and certain Firmans follow restricting the borrowing powers of the Khedive. The Firman of 8th June 1873, however, restores the force of the former Firmans, and grants the fullest internal autonomy to Egypt. The Khedive has the

power to make all necessary laws, and there is no mention of even the fundamental laws of the Ottoman Empire being applicable to Egypt; the right to enter into International Conventions was also once more granted. The Firman of Investiture of Tewfik Pasha, 7th August 1879, does not require any special remark, except to recall that it was one of the examples in which the European Powers have claimed to have a right to intervene in the relations of Turkey and Egypt, as being themselves, to some extent, parties to the Firmans. The French and English Governments asked the Ottoman Government to state what it meant by a clause, "the conventions shall be communicated to my Sublime Porte before their promulgation by the Khedive," which appeared to restrict the power of the Khedive to enter into conventions with foreign Powers. The answer, however, was entirely satisfactory, as it was "formally declared that the paragraph in question excluded all obligation on the part of the Khedive to obtain the sanction or authorisation of the Sultan to promulgate or put in practice the said conventions."[1]

The Firman of Investiture of H.H. Abbas Hilmi, 27th March 1892, is the last of the series. The civil, financial, and judicial administration of the country are vested in the Khedive, who has power to make all necessary regulations and internal laws. He is authorised to conclude conventions with foreign Powers in regard to customs, commerce, and all internal relations of foreigners with the Egyptian Government and private persons, provided that such conventions shall not derogate from the sovereign rights of the Imperial Government, or be contrary to existing political treaties; and to insure that there is no such derogation, these conventions have to be communicated to the Sublime Porte before promulgation. The Khedive may not transfer to third parties any of the territory entrusted to him, or any of the sovereign rights which have been delegated to him by the Sultan. The other clauses, dealing with taxes, coinage, the army, building war-ships, and the making of appointments, are similar to the corresponding clauses in the Firman of 1841; but, in spite of this similarity, the restrictions no longer exist in fact. Thus Egypt has her own army, which has been increased far beyond the figure mentioned in the Firman, and the taxes are no longer collected in the Sultan's name. Other restric-

[1] Letter addressed by T.E. MM. Fournier and Layard to H.E. Caratheodory Pasha. Recueil des Décrets, p. 240.

tions have no longer any value. Thus Egypt has no need of a navy so long as she is under the protection of England; the Turkish gold coinage hardly exists in Egypt, the English sovereign being much more common; and, as the Sultan invariably accepts the appointments made by the Khedive, even to the highest ranks, that restriction is no longer of any value.[1]

As a result of the Firmans, Egypt undoubtedly is still a province of the Ottoman Empire, but, by these Firmans and by custom, she has acquired a degree of autonomy which approaches independence. These Firmans, lastly, cannot be altered without the consent of the European Powers. There are two questions in reference to the Firmans which require special notice; they refer to the powers of Egypt to legislate and make conventions. In regard to the right of the Egyptian Government to make International Conventions, it would appear that it has power to make conventions in reference to every question except the cession of territory, or the making of peace or war. In consequence, the Ottoman Government has no longer power to bind Egypt by treaties contracted between the Porte and Foreign Powers, although all existing treaties made between the Porte and Foreign Powers are binding on Egypt, except in so far as they have been expressly modified or abrogated. Thus the Ottoman Capitulations are binding on Egypt, and, in fact, this was expressly stipulated for in the Convention of London of 1840. Egypt has entered into commercial treaties with practically all the Powers except Russia. The relations of Egypt and these Powers are regulated by these Egyptian conventions, while the commercial relations of Egypt and Russia continue to be regulated by the Ottoman commercial conventions. Examples of the wide extent of Egypt's power to enter into International relations as distinct from Turkey are given by the Sanitary Convention of Venice in 1892, at which Egypt was separately represented. Egypt has also joined the Postal Union on her own account;[2] and in the negotiations between Egypt and Great Britain in 1895, in regard to the regulations of the Slave Trade, there is no mention of Egypt being

[1] The Grand Kadi of Egypt is, however, still appointed by the Sultan.

[2] The Egyptian Government has, during the last six months, entered into postal arrangements with practically all the important States, as well as the majority of the British Colonies, for the reduction of postal rates; and at the Postal Congress at Rome the special representative of Egypt took a very prominent position.

bound by the Brussels Convention, although that convention was signed by Turkey. The convention instituting the system of Mixed Courts in Egypt of 1875 is also an example of a similar nature. In regard to Legislation, before the Firman of 1867 Egypt was undoubtedly bound by Ottoman Law; after that date it was only the fundamental laws of the Ottoman Empire which were to apply to Egypt. Before 1867 all Ottoman Laws were communicated to Egypt, but after that date, although certain of these laws were communicated and published in the Arabic edition of the "Laws and Decrees," none were published in the French edition, and it is hard to see how, considering the Firmans, they could be made to apply to Egypt. The Mixed Courts, however, have held that two circulars relating to the Greek and Armenian Patriarcates apply to Egypt; and the same Courts have held that when Egyptian Law is silent—for instance, in regard to mines—the Ottoman Law is to apply.[1] It is difficult, however, to justify the latter decision. The Egyptian power of legislation is, of course, limited to internal affairs; it was, therefore, no exception to make the Ottoman Law of Nationality of 1867 applicable to Egypt. The question of legislation has been very much complicated by the fact that Egypt is a Mohammedan state, and the Law of Islam must therefore apply in it;[2] but Mohammedan Law applies in Egypt not because it is a province of Turkey, but simply because Egypt is a Mohammedan state.

Mohammed Aly seems never to have lost sight of the fact that the permanent prosperity of Egypt depended upon the reopening of the route to India by Suez and the Red Sea. After several failures the scheme was at last successful, and in 1845 the mails from India arrived in London, coming by Egypt and Europe, in thirty days. "From 1842 to 1849 the average was a total of some 15,000 travellers who visited or passed through Egypt annually." Saïd Pasha set himself to complete the railways from Alexandria to Cairo, and from Cairo to Suez; he also supported the scheme of M. de Lesseps to construct a canal through the Isthmus of Suez. The canal was opened, amid scenes of the most lavish splendour, by the Khedive Ismaïl in 1869.

[1] 23rd Dec. 1897, B. L. J., x. p. 81.

[2] The position of the Sultan as Kalif, or representative of the Prophet, complicates the position still further. It is more the religious than the political bond which at present unites Egypt to Turkey.

This policy of attracting European commerce and European interests to Egypt had its effect upon the legislation of the country, apart from the extensions given to the immunities and privileges of the Capitulations. When the direct intercourse between Egypt and Europe had been severed early in the sixteenth century, the civilisation of the latter was only in process of development, and was not very much further advanced than that of Egypt; but in the three following centuries that development had been most marked in Europe, while Egypt remained stationary. By a very gradual process, covering a period of three centuries, a very elaborate and highly developed system of government had been accepted in the great states of Europe, while with a development in civilisation came an equal development in the legal systems and institutions of these states; new theories and new principles were accepted and gradually adopted by the people at large, and in no part of the administration was this more true than that of justice, and especially in so far as it concerned foreigners. These changes had been so revolutionary that had they been introduced by one act the result would have been disastrous to the states interested; but introduced gradually, step by step, and principle by principle, the changes came only when the people were prepared for them, and only after they had been educated up to them. Introduced thus, these changes seemed natural, and appeared to be introduced because the people themselves desired them. At times more revolutionary measures were adopted, but, generally speaking, the changes had come gradually, or only after protracted crusades, such as that of Rousseau and the disciples of Revolution in the eighteenth century, which placed the people in a position better to assimilate their new doctrines. On the other hand, there had been no similar development in the civilisation of Egypt during these years, and there was no attempt to educate the people up to this standard. The result was that when institutions were introduced into Egypt which had been tried and generally approved in Europe, they utterly failed in Egypt. The people, lacking the precedent education and development which were essential, could not assimilate these new principles, which, not meeting the needs of the people, failed. The legislative and administrative policy adopted in Egypt before 1882 may be summed up as an imitation of foreign models without any attempt to adapt these institutions to the special circumstances existing in Egypt. It was the same policy

as that which had been followed in Turkey during the history of the Tanzimat, and the result was hardly more satisfactory.

The Government of Egypt had, in 1882, lost the confidence of the people to such an extent that the authority of the Khedive was menaced. The Khedive had lost prestige, not only abroad but at home, on the one hand, through the effects of the State's bankruptcy, and, on the other hand, by its administrative failure both in Egypt and the Sudan. It was at this moment that the British Government intervened to save that authority which she and the other European Powers had been responsible for having set up some forty years before. Egypt had been created a State through the intervention of the Powers of Europe, it was therefore the duty of those Powers to preserve it now that it was in danger; but England alone intervened, and it was the English army which defeated the rebels and reinstated the Khedive. The position is admirably summarised by Lord Dufferin in his Report in 1883[1]:—"A succession of unexpected events over which we have had no control, and which we had done our best to avert, has compelled us to enter Egypt single-handed, to occupy its capital and principal towns with an English force, and to undertake the restoration of a settled Government. As a consequence, responsibilities have been imposed on us. Europe, and the Egyptian people, whom we have undertaken to rescue from anarchy, have alike a right to require that our intervention should be beneficent and its results enduring; that it should obviate all danger of future perturbations; and that it should have established on sure foundations the principles of justice, liberty, and public happiness." Ten years later Lord Rosebery declared the necessity for continuing the same policy[2]:—"All these considerations point to the conclusion that for the present there is but one course to pursue: that we must maintain the fabric of administration which has been constructed under our guidance, and must continue the process of construction without impatience, but without interruption, of an administrative and judicial system which shall afford a reliable guarantee for the future welfare of Egypt."[3]

After the destruction of the rebels at Tel-el-Kebir, Egypt was

[1] Lord Dufferin's Report, Blue Book, Egypt, 1883.

[2] Despatch of 16th Feb. 1893.

[3] The question of the occupation of Egypt is summarised with great clearness by Lord Cromer in his Report for 1904, Egypt, No. 1, 1905, pp. 2, 3.

left without an army, and a prey alike to the rising power of the Mahdi in the south or of any other hostile combination. There was no force or power behind the Khedive to insure obedience. Reform in the administration was essential to the welfare of Egypt, but the Khedive not only required advice as to the nature of the reforms necessary, but also power to enforce these reforms. When a person is incapable of acting by himself the law appoints a guardian to give him advice and assist him in his acts; England by the force of circumstances had the office of guardian to Egypt forced upon her, and until the ward is capable of acting alone this relationship must continue. Lord Dufferin was appointed to determine what reforms were to be introduced, as a preliminary to the withdrawal of the British garrison; it was not understood then, as it is now, that so soon as the English army was withdrawn the reforms would disappear. The work of government is carried on by the Egyptian Ministers with the advice of English advisers, and with the assistance of a relatively small staff of English Under-Secretaries of State and other officials; while behind these is the guiding hand and master mind of Lord Cromer; and the outward and visible sign of this power behind the throne is the Army of Occupation. A warning note has recently been struck by Sir Auckland Colvin:— "The very rapidity with which order has replaced misrule, and prosperity has succeeded to insolvency, is misleading. The result has been brought about by the energy and ability of foreigners; it implies no guarantee that were these withdrawn, other conditions would remain unchanged. All question of Islam apart, there is no native power in Egypt which could maintain, far less continue, the work of reform for a twelvemonth if the controlling hands were removed."[1] The history of the reforms introduced since the British

[1] Sir Auckland Colvin, "The Making of Modern Egypt," p. 413. Compare this with Lord Cromer's remarks in his Report for 1904, p. 3:—

"It was, perhaps, insufficiently appreciated at the time that the policy of reform and of speedy evacuation combined was wholly impracticable. One order of ideas was incompatible with the other—neither could any practical means be found to reconcile these conflicting and mutually destructive aspirations. Whilst discussions on the subject were proceeding news arrived of the destruction of General Hicks's army in the Sudan. Any idea of immediate evacuation had to be abandoned. By the time Sudan affairs had settled down, Egypt had been well started on the path of reform. It was no longer merely a question of whether the occupation should be continued with a view to initiating improvements. It was rather a question of whether the

Occupation has been fully described by Lord Milner and Sir Auckland Colvin; but before turning to our immediate question—the influence of the Capitulations on this reform—we would refer to the two general rules laid down by Lord Cromer in order to insure a continuance of Egyptian prosperity. "One is that the utmost care should be taken not to embark in any scheme involving heavy expenditure until all the facts connected with the subject have been fully examined and discussed. If there is one lesson more than another which is to be derived from a consideration of the recent history of Egypt, it is the desirability of advancing steadily and continuously, but without haste. . . . The other rule is that, when once both the necessity and the feasibility of any project have been clearly demonstrated, the Egyptian Government may safely adopt a policy of some financial boldness in the direction of spending capital. . . . As regards moral progress, all that can be said is that it must necessarily be slower than advance in a material direction. I hope and believe, however, that some progress is being made. In any case, the machinery which will admit of progress has been created. The schoolmaster is abroad. A reign of law has taken the place of arbitrary personal power. Institutions, as liberal as is possible under the circumstances, have been established. In fact, every possible facility is given, and every encouragement afforded, for the Egyptians to advance along the path of moral improvement. More than this no Government can do. It remains for the Egyptians themselves to take advantage of the opportunities of moral progress which are offered to them." [1]

British garrison should be withdrawn, with the probability, amounting almost to a certainty, that its withdrawal would involve the sacrifice of the vantage-ground which, with much toil and difficulty, had already been gained. That has been the phase of the Egyptian question for the last fifteen years or more; that is its present phase; and that is the phase in which, unless I am much mistaken, it will continue for a very long time to come."

[1] Lord Cromer's Report for 1903, p. 70, Egypt, No. 1, 1904.

CHAPTER XIII

THE PRIVILEGES OF THE CAPITULATIONS

The privileges accorded by the Capitulations may be summarised under the following heads:—(1) The right accorded to foreigners to enter Ottoman territory, to reside there and carry on commerce; (2) The right to practise their own religion without molestation, and freedom from the rules enforced against Rayah in reference to dress, &c.; (3) Inviolability of domicile; (4) Exemption from all taxes other than customs dues; (5) The right to apply the national law to successions; (6) Immunity from local jurisdiction, and immunity from local laws. The first five of these privileges do not require much discussion or consideration, but the last is of the greatest importance. We shall refer in each case to the articles of the Capitulations granting the privilege, comparing it with similar privileges granted in other countries, and the special necessity for such grants in Moslem countries. Special reference will also be made to the extensions or modifications which have been made by custom or otherwise in Egypt. It will also be remembered that, as the benefit of "the most favoured nation clause" applies to the Capitulations, English subjects are entitled to the same privileges as have been granted to any other nation. Thus the preamble of the first English Capitulation of 1580 contains the clause, "and that as we had graunted unto other Princes our confederates, privileges, and Imperiall decrees, concerning our most inviolable league with them, so it would please our Imperiall Majestie to graunt and confirme the like priviledges, and princely decrees to the aforesaide Queene"—a clause which is confirmed by article 18 of the English Capitulation of 1675: "That the Capitulations, privileges, and articles granted to the French, Venetian and other Princes, who are in unity with the Sublime Porte, having been in like manner, through favour, granted to the English, by virtue of our special command, the same shall be always observed according to the form and tenor thereof,

so that no one in future do presume to violate the same, or act in contravention thereof."[1]

The first privilege granted by the Ottoman Capitulations was the right to enter Ottoman territory either by sea or land, to reside there, travel within its territories, and carry on commerce. As a result of the increased intercourse between States of European civilization, the necessity for such special permission has long ceased. "All the Powers now generally accord to each other, in time of peace, freedom of entry, transit and sojourn, both by land and by sea, and upon rivers bounded by several states. This freedom is confirmed in a multitude of treaties of peace, boundary or commerce; but even in default of treaties it rests upon generally recognised usage, and in some states upon their own fundamental laws. In many states strangers are to-day permitted even to buy real estate, either by virtue of laws or in conformity with treaties."[2] But there was a time when such intercourse was universally discouraged even in Europe, and in Turkey at the time the Capitulations were granted a special permission was essential in virtue of the rules of Mohammedan Law. "If an unbeliever come upon Moslem territory in order to carry on trade, for example, he is not safe until his life has been guaranteed him, and it is not permitted to extend such guarantee beyond four months. If any one gives it for a longer period of time that shall be void."[3] It will be remembered also that, if the infidel merchant remained in Moslem territory after the expiration of his permit or passport, he became a Rayah, liable for the Capitation tax, and not allowed to return to his own territory. Under such circumstances the grant of this special privilege may be understood. The permission is given in the following terms:—"Our Imperiall commandement and pleasure is, that the people and subjects

[1] The reference to the Capitulation of 1580 is Hackluyt, vol. v. pp. 183 to 189; and to Hertslet's Commercial Treaties, vol. ii. pp. 346 to 370, for the Capitulation of 1675. The first twenty articles of the 1675 Capitulation are practically the same as the twenty-two articles of the 1580 Capitulation.

[2] De Martens, section 84.

[3] Reland's Miscellaneous Dissertations, Utrecht, 1708, quoted in U.S.A. Consular Report, Washington, 1881.

Abul-l-Hussein el Kudûri says: "If any pilgrim or stranger who is not a Moslem come to us imploring servitude and protection, it is permissible for him to dwell under our rule, provided the Imâm orders it; if he remain among us a full year he must be ordered to pay the poll-tax which, if he remains, is to be required of him, for he then becomes a tributary received into the class of clients, nor shall he be permitted to return to a hostile dominion." See also Chapter III.

of the same Queene, may safely and securely come to our princely dominions, with their goods and marchandise, and ladings, and other commodities by sea, in great and small vessels, and by land with their carriages and cattels, and that no man shall hurt them, but they may buy and sell without any hinderance, and observe the customes and orders of their owne country."[1] "If the people of the aforesayd Queene, their interpreters and marchants, shall for trafique sake, either by lande or sea repaire to our dominions paying our lawfull toll and custome, they shall have quiet passage, and none of our captaines or governours of the sea, and shippes, nor any kinde of persons, shall either in their bodies, or in their goods and cattels, any way molest them."[2] There are a number of articles in the 1580 Capitulation, as well as in all the later Capitulations, amplifying and completing this right. Thus Englishmen who have been captured during their travels are to be released; Turkish ships are to assist English vessels which are in danger through tempestuous weather; they shall be allowed to purchase victuals; if the ships are wrecked the "Beys and Judges, and other our subjects" are to succour them, and restore their goods; Englishmen who have been made slaves are to be set free; ships are not to be arrested, but are rather to be helped and assisted; thieves and robbers stealing from the English ships are to be caught and "punished most severely," and all piratical acts are strictly forbidden.

Similar privileges had been granted by the earlier Egyptian Capitulations. Thus in the Capitulation of Kait Bey, 10th Dec. 1488, we find: "They shall come freely into our illustrious States with their cargoes, merchants, factors, and brokers, with the condition, however, that they pay the customs duties of the Dogana." The privileges obtained by Canute from Rome were of a similar

[1] Capitulation, 1580, Article 1. Also Article 3, permission for entry of ships into harbours and to depart again without molestation.

[2] Capitulation, 1580, Article 7. This is repeated in later Capitulations. Thus in Article 23, Capitulation, 1675 (being the same as the Capitulation granted to James I.), we read: "That the English nation, and all ships belonging to places subject thereto, shall and may buy, sell, and trade in our sacred dominions, and (except arms, gunpowder, and other prohibited commodities) load and transport in their ships every kind of merchandize, at their own pleasure, without experiencing any the least obstacle or hindrance from any one; and their ships and vessels shall and may at all times safely and securely come, abide, and trade in the ports and harbours of our sacred dominions, and with their own money buy provisions and take in water, without any hindrance, or molestation from any one."

nature: "That my subjects, as well as marchants, as others who travailed for devotions sake, should without all hinderance and restraint of the foresaid stops and customers, goe unto Rome in peace, and returne from thence in safetie."[1] As were also the privileges granted by the Emperor of Russia in 1555: "We . . . give and grant free licence, facultie, authority and power unto the said Governour, Consuls, Assistants and commonalty of the said fellowship, and to their successors for ever . . . (that they) may at all times hereafter for ever more surely, freely and safely with their shippes, merchandizes, goods and things whatsoever saile, come and enter in all and singular our lands . . . and there tarry, abide and sojourne, and buy, sell, barter and change all kind of merchandizes . . . and every part thereof freely and quietly without any restraint, impeachment, price, exaction, prest, straight custome, toll, imposition, or subsidie to be demanded . . . so that they shall not need any other safe conduct or licence generall, ne speciall of us, our heires or successors, neither shall be bound to aske any safe conduct or licence in any of the aforesaide places subject unto us."[2]

The right to appoint consuls in the more important centres of trade was a natural corollary of these privileges. "If either in Alexandria, Damasco, Samos, Tunis, Tripolis in ye west, the port townes of Ægypt, or in any other places, they purpose to choose to themselves Consuls or governours, let them doe so, and if they will alter them at any time, and in the roome of the former Consuls place others, let them do so also, and no man shall restraine them."[3] In virtue of this English Consuls were appointed in many parts of the

[1] Hakluyt, vol. i. pp. 313, 314. "A testimony of certaine Privileges obteined for the English and Danish Merchants by Canutus, the King of England, in his journey to Rome."

Article 41 of the 1675 Capitulation allows the free carriage and entry of pilgrims. See also "The Great Charter granted unto foreigne marchants by King Edward the first, in the 31 yeare of his reigne, commonly called Carta Mercatoria, Anno Domini 1303. Hakluyt, vol. i. p. 327 to 338." "First that the sayd kingdomes and countreys may come into our dominion with their marchandises whatsoever safely and securely under our defence and protection without paying wharfage, pontage, or pannage. . . . 2. Item that the aforesayd marchants may at their pleasure lodge and remaine with their goods in the cities, boroughs, and townes aforesaid. . . ."

[2] Hakluyt, vol. ii. pp. 297 to 303. "A copie of the first Privileges graunted by the Emperor of Russia to the English Marchants in the yeere 1555." Renewed in 1567; see Hakluyt, vol. iii. p. 97.

[3] Capitulation, 1580, art. 15. See Article 4 of the Russian Privileges of 1555.

Ottoman Dominions. Hareborne[1] was already ambassador at Constantinople in 1582; Harvie Millers was appointed in 1583 consul "for the English nation in Alexandria, Cairo, and other places in Egypt";[2] Richard Forster was made consul in the same year "in the places of Alepo, Damasco, Amau, Tripolis, Jerusalem, &c."[3] The duties of these consuls were generally to look after the interests of English subjects, to secure the estate of deceased Englishmen, and to act as judges in certain cases, or attend the hearings before Moslem Courts when Englishmen were parties. The Capitulations expressly grant them certain privileges:—"That the Consuls appointed by the English Ambassador in our sacred dominions, for the protection of their merchants, shall never under any pretence be imprisoned, nor their houses sealed up, nor themselves sent away; but all suits or differences in which they may be involved shall be represented to our Sublime Porte, where their Ambassadors will answer for them."[4] They and the ambassadors were allowed "any janizery or interpreter they please,"[5] the interpreters being "the representatives of the Ambassadors"[6] or consuls in certain matters. These interpreters might be either Englishmen or native subjects;[7] but they are in either case "exempt from all contributions and impositions whatever." The ambassadors are also entitled to servants "of any nation whatsoever, who shall be exempt from impositions, and in no manner molested."[8] The privileged position of these native servants and interpreters has already been discussed under the head of Protection, and is now regulated by the Ottoman Law of 1863. We shall discuss more fully later the special privileges enjoyed by consuls in the Ottoman Empire.

The most important right which completes this privilege of entry into, and residence in, Ottoman territory is the right of inviolability of the foreigner's domicile. The privilege is granted most clearly in Article 70 of the French Capitulation of 1740: "Les gens de justice et les officiers de ma Sublime Porte, de même que des gens d'épée, ne

[1] "The Queenes Commission under her great Seale, to her servant Master William Hareborne, to be her majesties Ambassadour or agent, in the partes of Turkie, 1582."—Hakluyt, vol. v. pp. 221 to 224. And "The Queenes Letter to the great Turke 1582, written in commendation of Master Hareborne, when he was sent Ambassadour, 1582."—Hakluyt, vol. v. pp. 224 to 228.

[2] Hakluyt, vol. v. p. 259.

[3] *Ibid.* vol. v. p. 260.

[4] Capitulation of 1675, Article 25.

[5] *Ibid.* Article 28.

[6] *Ibid.* Article 45.

[7] *Ibid.* Article 46.

[8] *Ibid.* Article 60.

pourront, sans nécessité, entrer par la force dans une maison habitée par un Français; et lorsque le cas requerra d'y entrer, on en avertira l'ambassadeur ou le consul, dans les endroits où il y en aura, et l'on se transportera dans l'endroit en question avec les personnes qui auront été commises de leur part; et si quelqu'un contrevient à cette disposition, il sera châtié." The first part of this article contains nothing exceptional; it is simply the declaration or recognition of the principle of individual liberty generally recognised in European systems of law. The police officers of the government are not to enter any private house, even that of a foreigner, unless under force of "necessity."[1] But the article goes further than this, and says that, even when this necessity exists, no entry may be made unless the ambassador or consul of the foreigner is first notified, and is present at the time of entry. When foreigners were accorded the right to own immovable estate within the Ottoman Empire by the Law of 1867, this privilege of inviolability of domicile was expressly renewed, and in the Protocol of 1868[2] domicile was defined: "La maison d'habitation et ses attenances, c'est à dire les communs, cours, jardins et enclos contigus à l'exclusion de toutes les autres parties de la propriété." As a result of this privilege, the public authority must first advise the consul before any entry is made into the "domicile" of a foreigner, and the consul himself, or his dragoman, must be present during the entry. In Egypt the same privilege exists in an even more extended form, since "domicile" is there defined by custom to include the place of business as well as the residence of the foreigner.[3]

Not only were foreigners, who were subjects of a state having a Capitulation from the Porte, free to enter Ottoman dominions, reside there in security, and carry on trade, but while within Ottoman territory they were allowed to profess their own faith, practise their own religion, and were free from the restrictions usually placed upon Christians within Moslem territory. Not only did Mohammedan

[1] The article so far is merely in accordance with the Ottoman Penal Code, Article 105, which is copied from the French Penal Code, Article 184.

[2] Young, vol. i. pp. 337 to 341, for Law of 1867, and vol. i. pp. 341 to 345 for Protocol of 1868.

[3] The best known case is the famous "Bosphore" incident, mentioned both by Lord Milner and Sir Auckland Colvin. The cabin of a foreigner on a ship within the territorial limit has been decided, in reference to the Customs Regulations, as being the domicile of a foreigner, and therefore requiring notification to his consul, and the consul's attendance during entry and search for contraband.

Law place restrictions on the entry of foreigners, but the Christian within Moslem territory was obliged to observe the following rules:— "He shall not found churches, monasteries, or religious establishments, nor raise his house so high as, or higher than, the houses of the Moslems; nor ride horses, but only mules and donkeys, and these even after the manner of women; draw back and give way to Moslems in the thoroughfares; wear clothes different from those of the Moslems, or some sign to distinguish him from them; have a distinctive mark when in the public baths, namely, iron, tin, or copper bands; abstain from drinking wine and eating pork; not celebrate religious feasts publicly; nor sing nor read aloud the text of the Old and New Testaments, and not ring bells; nor speak scornfully of God or Mohammed; nor seek to introduce innovations into the state, nor to convert Moslems; nor enter mosques without permission; nor set foot upon the territory of Mecca, nor dwell in the Hidjaz district."[1] The regulations laid down in the Hedaya are similar: "It behoves the Imâm to make a distinction between Mussulmans and Zimmees in point both of dress and of equipage. It is therefore not allowable for Zimmees to ride upon horses, or to use armour, or to use the same saddles and wear the same garments or head-dresses as Mussulmans; and it is written, in the Jama Saqueer, that Zimmees must be directed to wear the Kisteej openly, on the outside of their clothes (the Kisteej is a woollen cord or belt which Zimmees wear round their waists on the outside of their garments); and also, that they must be directed, if they ride upon any animal, to provide themselves a saddle like the panniers of an ass. . . . It is to be observed that the

[1] Siradji-el-Muluk, Boulak edition, 1289, p. 229, the chapter on "the Rules concerning Tributaries." See also U.S.A. Consular Report, 1881, p. 32, note. "There are in Mount Lebanon men still living who remember when no Christian dared to enter a city of Syria when wearing white or green clothes, for the 'Unbelievers' were allowed to appear only in dark-coloured stuffs. In Homs and Hamah the Christians, even down to the year 1874, when I was there, could not ring bells outside of their churches; in Beirut the first to put up a large bell were the Capucine monks, and soon after that the American missionaries, in 1830, hung a small church-bell upon the roof of their place of worship. In 1876 the prior of the Franciscan monks set up a bell, a thing until then unheard of, over the new church which that order had erected in the city of Aleppo, but owing to the Herzegovinian and Bosnian troubles then raging, and the evident displeasure of the Aleppine Moslems, a large deputation of influential Christians residing in Aleppo begged of the prior to take down the obnoxious metal, telling him that it might be the cause of an onslaught upon all Christians in the city. The prior wisely took it down."

insignia incumbent upon them to wear is a woollen rope or cord tied round the waist, and not a silken belt. It is requisite that the wives of Zimmees be kept separate from the wives of Mussulmans, both in the public roads, and also in the baths; and it is also requisite that a mark be set upon their dwellings, in order that beggars who come to their doors may not pray for them. The learned have also remarked that it is fit that Zimmees be not permitted to ride at all, except in cases of absolute necessity; and if a Zimmee be then, of necessity, allowed to ride, he must alight whenever he sees any Mussulmans assembled; and if there be a necessity for him to use a saddle, it must be made in the manner of the panniers of an ass. Zimmees of the higher orders must also be prohibited from wearing rich garments."[1]

Saladin's Capitulation to the Pisans grants the privilege of freedom of religion to Christian foreigners. "As to the Church that

[1] Hedaya, book ix., chapter viii.

See also Gibbon, v. p. 493. "The captive churches of the East have been afflicted in every age by the avarice or bigotry of their rulers; and the ordinary and legal restraints must be offensive to the pride or the zeal of the Christians. About two hundred years after Mahomet, they were separated from their fellow subjects by a turban or girdle of a less honourable colour; instead of horses or mules, they were condemned to ride on asses, in the attitude of women. Their public and private buildings were measured by a diminutive standard; in the streets or the baths, it is their duty to give way or bow down before the meanest of the people; and their testimony is rejected, if it may tend to the prejudice of a true believer. The pomp of processions, the sound of bells or of psalmody, is interdicted in their worship; a decent reverence for the national faith is imposed on their sermons and conversations; and the sacrilegious attempt to enter a mosck or to seduce a Musulman will not be suffered to escape with impunity. In a time, however, of tranquility and injustice, the Christians have never been compelled to renounce the Gospel or to embrace the Koran; but the punishment of death is inflicted upon the apostates who have professed and deserted the law of Mahomet."

Within the last few months the Egyptian Government has found it necessary to prepare and issue special regulations for the visit of Christian tourists to the University Mosque of El Azhar in Cairo; but, speaking generally, no difficulty is experienced by visitors to mosques in Cairo, provided the visitor is armed with a special ticket of admission issued by the Wakf Administration, wears special slippers over his boots, and does not enter the mosque during services.—Hakluyt, vol. v. p. 89. "The voyage of M. John Locke to Jerusalem, 1553." "The 23 we sent the bote on land with a messenger to the Padre Guardian of Jerusalem. This day it was notified unto mee by one of the shippe that had beene a slave in Turkie, that no man might weare greene in this land, because their prophet Mahomet went in greene. This came to my knowledge by reason of the Scrivanello, who had a greene cap, which was forbidden him to weare on the land."

belonged to them and that we gave them, they shall have it as they had it before; and when they shall go to the church they shall suffer no molestation whatever, neither on the way nor within the church; and inside the church no noise may be made that hinders them from hearing the Word of God according to the precept of their law. But they may observe their law even as the precepts of God and their laws ordain." The same Capitulation granted a bath into which no one else should be allowed to enter. Breydenbach speaks of the Christian chapel in the Funduk of the Catalans, and mentions that they kept pigs; and the Kaït Bey Capitulation allows the Florentines to wear ordinary native dress when travelling in the interior, and to eat and drink as they pleased. "That should any Florentine make a voyage from one country to another in our Moslem dominion, he may, for greater security of his person and belongings while travelling on the way, dress himself like a Moslem so as to be free himself from unhappy encounters and vexations, and no one may dare disturb him as to eating and drinking, neither burden him with any costs and charges. Whereof we do ordain the execution."

The French Capitulation of 1535, Article 6, grants the privilege of freedom of religion: "En ce qui touche la religion, il a été expressément promis, conclu et accordé que les marchands, leurs agents et serviteurs, et tous autres sujets du Roi ne puissent jamais être molestés, ni jugés par les cadi, sandjacbey, sousbachi ni autres que par l'Excelte-Porte seulement, et qu'ils ne puissent être faits ni tenus pour Turcs,[1] si eux-mêmes ne le veulant et ne le confessent de bouche, sans violence, mais qu'il leur soit licite d'observer leur religion." This grant is repeated and renewed in many other subsequent Capitulations, together with clauses dealing with special abuses in reference to religion, thus: "If any man shall say, that these being Christians have spoken any thing to the derogation of our holy faith and religion, and have slandered the same, in this matter as in all others, let no false witnesses in any case be admitted."[2] This practice was apparently adopted in order to extort money from foreigners by trumping up a case of blasphemy against Islam. In regard to the regulations restricting the fashion of Christian

[1] The word Turk here is evidently used as synonymous with Moslem, an example of how nationality and religion were confused.

[2] Art. 11 of Capitulation of 1580. The French Capitulation of 1604, Art. 3, is in similar terms.

dress, "for their safety and convenience they may dress themselves according to the custom of the country."[1] The Capitulations also relieve Christians from the restrictions as to wine: "That no obstruction or hindrance shall be given to the Ambassadors, Consuls, and other Englishmen, who may be desirous of making wine in their houses, for the consumption of themselves and families, neither shall the janizaries nor slaves, or others, presume to demand or exact any thing from them, or do them any injustice or injury."[2]

The delicate question of conversion to Islam is likewise dealt with by the Capitulations; and in order to prevent any forced conversion, the convert must make a formal declaration before the local courts or other competent authority in the presence of his consul or consular delegate.[3] This publicity and formality was all the more necessary since a conversion to Islam, at that time, entailed the adoption of Turkish nationality. This change of nationality may be inferred from a clause which very frequently occurs, and which shows that, as a result of the conversion, the convert ceased to be under the jurisdiction of his consul; thus, "That if any Englishman should turn Turk, and it should be represented and proved, that besides his own goods, he has in his hands any property belonging to another person in England, such property shall be taken from him and delivered up to the Ambassador or consul, that they may convey the same to

[1] French Capitulation, 1740, Art. 63.

[2] English Capitulation, 1675, Art. 29. The modern Customs Conventions place no restriction on the import or sale of wine.

[3] Dutch Capitulation of 1680, Art. 49. "Si, contrairement à la loi sainte, quelqu'un molestait un Néerlandais sous prétexte qu'il aurait embrassé l'islamisme, et cela dans le but de lui extorquer de l'argent, cette accusation ne sera pas admise: il faudra pour cela que de son plein gré et en présence du drogman il déclarât avoir embrassé l'islamisme; on attendra donc l'arrivée du drogman, et on ne le molestera pas avant qu'il ne soit venu."

Austrian Capitulation of 1718, Art. 16. "Tant qu'un négociant, un consul, un vice-consul et tout autre sujet de S. M. I. n'embrassera pas de son plein gré l'islamisme, il ne sera pas molesté à ce sujet sur la simple déposition de quelques témoins qui attesteront sa profession de foi, et il ne pourra être poursuivi pour cet objet que lorsqu'il aura fait de son plein gré cette profession en présence d'un interprète impérial."

The Danish, Swedish and Spanish Capitulations, as well as that of the two Sicilies, contain similar clauses.

A Turkish Christian subject who embraces Islam must make a similar declaration before the head of his religious community.

For the conversion of Moslems to Christianity, see Diplomatic Correspondence quoted by Young, vol. ii. p. 11.

the owner thereof."[1] The frequent use of the word Turk for Mohammedan is also an argument in favour of the idea that the two were considered as the same. But since the Ottoman Law of 1869 the adoption of Islam does not necessarily imply any change of nationality, although it is the more common practice for a convert also to become a naturalised Turk.

The right to carry pilgrims is also fully accorded thus in the French Capitulation of 1740, Article 32: "Que les nations chrétiennes et ennemies qui sont en paix avec l'empereur de France, et qui désireront visiter Jérusalem peuvent y aller et venir, dans les bornes de leur état, sous la bannière de l'empereur de France, en toute liberté et sûreté, sans que personne leur cause aucun trouble ni empêchement. . . ." Nor was any distinction made in reference to the particular faith of the pilgrims: "Personne ne molestera les Néerlandais ou ceux qui en dépendent qui, en toute sûreté, iront faire le pèlerinage de Jérusalem, ou s'en retourneront; les religieux qui sont à l'église du Saint-Sépulcre ne les inquièteront pas et ne leur feront pas de difficultés sous le prétexte qu'ils sont luthériens; mais ils leur laisseront visiter les lieux qu'il faut."[2]

Not only were Christians allowed to preserve their faith, but they were also permitted to perform those services and acts of worship enjoined by their Church, subject, however, to certain restrictions. Foreign Christians are free to worship according to their faith within their churches; but a church cannot be built or repaired without the consent of the Ottoman Government. The rule still applies in Turkey, and applies to native Christians as well as to foreigners; a firman is necessary in all cases. In Egypt, however, modern practice has very greatly modified this rule, and churches, as well as schools, may be freely built or repaired by non-Moslems, whether native or foreign, without the necessity of any permission from the

[1] English Capitulation, 1675, Article 61. Article 71 is even stronger in its terms. "That should any Englishman coming with merchandize turn Turk, and the goods so imported by him be proved to belong to merchants of his own country, from whom he had taken them, the whole shall be detained, with the ready money, and delivered up to the ambassador, in order to his transmitting the same to the right owners, without any of our judges or officers interposing any obstacle or hindrance thereto."

See also French Capitulation, 1740, Article 68; Austrian, 1718, Article 16; Danish, 1746, Article 15.

[2] Dutch Capitulation, 1680, Article 52.

See also English Capitulation, 1675, Article 41.

Government. The only religious restriction in Egypt is that religious services must be conducted within doors and not outside,[1] a rule which is very reasonable when we consider the number of different religions which are practised in Egypt, and the rivalries which have sometimes led to disturbances elsewhere—for instance, Jerusalem, where the rule has not always been so strictly observed.

A very considerable portion of the Ottoman Capitulations are occupied with commercial questions, and especially in reference to customs regulations.[2] Certain clauses refer to abuses similar to those provided for by the Capitulations of Kaït Bey: goods which have paid duty in one port are to be admitted free in another; duty is to be paid "on such goods only as they shall, of their own free will, land with a view to sale;" provisions are made for giving receipts for duty paid; when once the duty has been paid ships are free to depart without hindrance. The import of food was to be free: "that no excise or duty on animal food shall be demanded of the English, or any subject of that nation." Duties vary from time to time, and according to the article imported or exported. "That the English and other merchants navigating under their flag, who trade

[1] Funerals are excepted from this restriction. The ringing of church bells is in no way interfered with in Egypt.

[2] Out of seventy-five clauses in the English Capitulation of 1675, the following deal specially with commercial matters: 23, 30 to 37, 39, 40, 41, 44, 48 to 54, 56, 62 to 68, 74, and 75.

Article 23 gives a general permission to trade: "That the English nation, and all ships belonging to places subject thereto, shall and may buy, sell, and trade in our sacred Dominions, and (except arms, gunpowder, and other prohibited commodities) load and transport in their ships every kind of merchandize, at their own pleasure, without experiencing any the least obstacle or hindrance from any one; and their ships and vessels shall and may at all times safely and securely come, abide and trade in the ports and harbours of our sacred Dominions, and with their own money buy provisions and take in water without any hindrance or molestation from any one."

Article 34. "That the English merchants, and other subjects of that nation, shall and may, according to their condition, trade at Aleppo, Egypt, and other ports of our sacred Dominions, on paying (according to ancient custom) a duty of three per cent. on all their merchandize, without being bound to the disbursement of an asper more."

Article 36. "That such customs only shall be demanded on the said goods in the conquered countries as have always been received there, without any thing more being exacted."

"The customs inward of all commodities are ten in the hundred, and the custom is paid in wares also that you buy."—"Notes concerning the trade in Alexandria, 1584," Hakluyt, vol. v. p. 257.

to Aleppo, shall pay such customs and other duties on the silks bought and laden by them on board their ships as are paid by the French and Venetians, and not one asper more."[1] Certain articles may not be imported: "Arms, gunpowder, and other prohibited commodities." The export of others is restricted thus: "That the King having always been a friend to the Sublime Porte, out of regard to such good friendship His Majesty shall and may, with His own money, purchase for His own kitchen, at Smirna, Salonica, or any other port of our Sacred Dominions, in fertile and abundant years, and not in times of dearth or scarcity, two cargoes of figs and raisins, and after having paid a duty of three per cent. thereon, no obstacle or hindrance shall be given thereto."[2] The right to pay in English money was allowed, and no duty was imposed on money.[3] Besides the customs duty there was Consulage[4] and Anchorage duty, the latter being "three hundred aspers for anchorage duty, without an asper more."[5] Since the signing of special commercial conventions these clauses of the Capitulations have ceased to have any practical value.

There are two periods in the history of Turkish Commercial Treaties. The first is about the year 1838, and the second about 1861, besides which there are the Commercial Conventions entered into by Egypt on her own behalf. The first treaty of the first series was with England on 16th August 1838; and France and England both received Commercial Treaties on 29th April 1861.[6]

[1] English Capitulation, 1670, Article 44. Later there was a question whether the English paid duty on silk or not. See Article 75.

[2] English Capitulation, 1675, Article 74.

[3] *Ibid.*, Articles 22 and 21.

[4] *Ibid.*, Article 35. "That in addition to the duty hitherto uniformly exacted on all merchandize, laden, imported and transported to English ships, they shall also pay the whole of the consulage to the English Ambassadors and Consuls."

Also Article 43. "That notwithstanding it is stipulated by the Imperial Capitulations, that the merchandise laden on board all English ships proceeding to our sacred Dominions shall moreover pay consulage to the Ambassador or Consul for those goods on which customs are payable, certain Mahumetan merchants, Scots, Franks, and ill-disposed persons, object to the payment thereof; wherefore it is hereby commanded, that all merchandize, unto whomsoever belonging, which shall be laden on board their ships, and have been used to pay custom, shall in future pay the consulage, without any resistance or opposition."

[5] *Ibid.*, Article 70.

[6] These Treaties contain a clause expressly maintaining all the rights, privileges, and immunities which had hitherto been guaranteed by the Capitulations.

See Young, vol. iii.

Before 1838 Turkey was bound not to levy import duties beyond three per cent. *ad valorem;* but there existed, in spite of the Capitulations, a very large number of monopolies and trade restrictions which greatly interfered with the trade of foreign merchants. The new treaties undertook to abolish these in return for the right to increase the export duty to twelve per cent. and the import duty to five per cent.[1] The series of treaties of 1861 fixed the import duty at eight per cent., while the export duty was reduced to nine per cent., and was to be still further reduced by one per cent. each year until it amounted to only one per cent., at which rate it has remained ever since. A certain number of articles were forbidden to be imported, such as arms and munitions of war, tobacco, nitrate of soda, and salt;[2] otherwise trade was to be without restriction. The treaties of 1861 were to remain in force till 30th September 1889, but in 1890 it was agreed between the Turkish Foreign Office and the Powers that these treaties should remain in force until new conventions were entered into.[3]

The Firman of 1867 accorded to Egypt the power of making Customs Conventions with foreign Powers, a right which was extended by the Firman of 1873 to Commercial Conventions.[4] In exercise of this right a convention was entered into between Egypt and Greece on 3rd March 1884.[5] This was followed by a convention with England on 9th March 1884. Other Powers have followed suit, France being the last, entering into a convention in 1902; while Russia and the United States of America are now the only important States which have not entered into special commercial relations with

[1] The Hatti Sherif Gulhana, 3rd November 1839, says: "Although, thanks be to God, our Empire has for some time past been delivered from the scourge of monopolies, falsely considered in times of war as a source of revenue, a fatal custom still exists, although it can only have disastrous consequences; it is that of venal concessions, known under the name of 'Iltizani.'"

The abolition of monopolies should have applied to Egypt, but Mohammed Aly was at this time in open revolt.

[2] Du Ransas, vol. i. p. 181, comparing the system before 1838 with that introduced by these treaties, says that prohibition and restriction were the rule before 1838, but became the exception after that date.

[3] Recently there has been diplomatic discussion with a view to increasing the import duty. A Treaty was entered into with Germany, 26th August 1890, but it has never been put in force.

The regulations relating to the trade in the interior of Turkey do not concern us here.

[4] Ministry of Justice, "Recueil des Décrets, etc.," pp. 226 and 234.

[5] Gélat, vol. i. p. 207.

[6] *Ibid.*, p. 209.

Egypt. After the first Commercial Convention, Egypt promulgated a special Code of Customs Regulations on 2nd April 1884.[1] Owing to the fact that, at the time of promulgation of these Customs Regulations, the majority of States were governed by the Turkish Regulations, the Egyptian Regulations required to be made very similar to the Turkish; it is probable, however, that when all the Powers enter into direct commercial relations with Egypt, new regulations will be promulgated of a simpler and more satisfactory character. Those Powers which have not entered into direct relations with Egypt are still bound by the Turkish Conventions of 1861. There have been diplomatic negotiations for some time in reference to new Commercial Treaties with Turkey, and as Turkish commercial credit has fallen since 1861, it is probable that the new treaties will be far less favourable than the old, and certainly much less favourable than those of Egypt, whose credit has so very greatly improved since the British occupation. The majority of the Egyptian Conventions, before the French Convention of 1902, stipulated for an export duty of one per cent. and an import duty of ten per cent.; but as many States were entitled to the eight per cent. of the Turkish Conventions, the full amount was never exacted, and since the French Convention, which stipulates for eight per cent., the other States are entitled, in virtue of the most favoured nation clause, to the duty of eight per cent.[2] Goods which had been imported from abroad were free from all internal duties, a provision which has ceased to have importance since the final abolition of octroi duties in 1901.[3] By a Khedivial Decree of 25th November 1905, the im-

[1] Gélat, vol. i. p. 210, or Laws and Decrees, 1884, p. 146. Other Commercial Conventions are: — England, 29th October 1889; Portugal, 11th May 1890; Austria-Hungary, 16th August 1890; Belgium, 24th June 1891; Italy, 1st February 1892; Germany, 19th February 1892; Greece, 21st March 1895; France, 26th November 1902. Spain and Holland have accepted the Customs Regulations of 1884; Denmark, Norway, and Sweden have made no customs arrangements, but their trade with Egypt is insignificant.

See Memorandum of Mr. Caillard, the Director-General of Customs, to Lord Dufferin, Egypt, No. 6, 1883, describing the situation before the promulgation of the Egyptian Customs Regulations; and also Report by Sir H. Drummond Wolff, Egypt, No. 5, 1887, pp. 13 to 18.

[2] A further half per cent. is levied on imported and exported articles as dock dues, a charge which has been approved by the Mixed Courts.

By the Organic Decree of 1890, instituting the Municipality of Alexandria, a further charge of one-twentieth per cent. is levied on articles passing through that port, as a part of Municipal revenue. — Decree, 5th January 1890.

[3] Decree, 19th December 1901.

port duty on a number of articles was further reduced to four per cent.[1] "The most favoured nation clause" is included in these Egyptian Conventions, but the Sudan, Turkey, and Persia are expressly placed in an exceptional position.[2] It should also be noticed that, although this clause appears in the Turkish Conventions, it does not entitle those States which have not directly entered into commercial relations with Egypt to benefit from the more favoured position accorded by the latter; foreign States have the option of choosing between two courses—either to accept the Turkish Conventions or the Egyptian—but once having made their choice they are only entitled to the most favoured treatment accorded by that régime, and not entitled to special privileges granted by the other.

The right to import is free, but certain exceptions are made in the interests of public security and public morality. Certain of these restrictions are merely temporary, and refer to the prevention of disease; others are permanent, and include the import of arms and munitions, salt, nitrate of soda, saltpetre, tombac, and hashish; while tobacco is dealt with under special duties.[3] The right of export is said to be subject to restrictions, but in practice there are no restrictions. Apart from these limitations, foreigners, their ships and cargoes, are allowed to enter any Egyptian port just as freely as an Egyptian subject; and it makes no difference what the port of departure was or the origin of the cargo.[4] The export and import duties are fixed by the Egyptian customs officials after consulting the principal import or export merchants dealing with each article in question. Certain persons are exempt from taxation; these include the Khedive, the Army of Occupation, the members of

[1] Coal of different kinds, wood and oil for burning purposes, wood for construction, oxen, cattle, sheep, and goats, alive or dead.

[2] English Convention of 1889, Article 13.

[3] Before 1884 only Turkish tobacco was allowed to enter Egypt; it paid a duty of fifteen piastres per oke (or $2\frac{3}{4}$ lbs.), ten piastres being export duty from Turkey, and five piastres import duty in Egypt. The refusal to allow Greek tobacco, and the contraband trade which resulted from the high duty, offered a basis of negotiations with Greece, which resulted in the Convention of 1884 allowing the import of Greek tobacco at five piastres import duty. In April 1885 this import duty on tobacco was raised from five piastres to twelve piastres per oke, native grown tobacco thus being highly protected. In 1890 the import duty on tobacco was finally raised to twenty piastres per kilogramme (or 2.2 lbs.), and the growth of tobacco in Egypt was prohibited. It had been previously restricted, but the restrictions were not conformed to.

[4] English Convention, 1889, Article 1.

the foreign diplomatic and consular services, and certain religious establishments.

The Egyptian Customs Regulations are very important, as they offer several exceptions to the Capitulations, especially in reference to the privileges of domicile and jurisdiction. Speaking generally, the Egyptian Government has a freer hand, in relation to foreigners, under these regulations than in reference to any other matter. It is the Egyptian Customs Administration which collects the import and export duties, and, in order to fix these duties, they must be furnished with a copy of the manifest, and the importer or exporter must make a declaration as to the value of the goods.[1] The captains of ships entering Egyptian ports must, within thirty-six hours of their arrival, provide the custom-house with an exact copy of their manifest, which must correspond with the cargo on board; and another copy must be deposited in the customs-house before departure. The consignee of goods which are landed must make a declaration as to the contents and value of the articles contained in any package, producing, if necessary, all the papers in his possession in reference to the matter, and may have to open the package in order to allow the customs officials to verify the declaration. If the officials suspect fraud they may open the package in the absence of the consignee, provided they give four hours' notice, either to the consignee or his consul. A false statement as to value is not an offence, but a false statement as to contents is. The duty is not payable until the goods are removed; they may be left in bonded warehouses either belonging to the Government or subject to its inspection. Duty should be paid in money which is legal tender in Egypt; but under certain circumstances it may be paid in kind, as, for instance, when the customs officials have themselves fixed the value, because they could not accept the estimate given by the owner, and the owner will not agree to the customs estimate. There are three cases: either the goods are all of the same kind, in which case the payment in nature is decided proportionately to the quantity; or the goods are of different kinds or of different quality (in this case the payment in nature only refers to those articles about which there is a dispute; the choice usually lies with the customs officers, except in the case where the difference between the two estimates is more than ten per cent., in which case the choice

[1] Customs Regulations, Articles 5, 16, 18, 19, 26, 27.

is in part for each party); or, thirdly, the article in dispute is indivisible, in which case the customs may keep the article on paying the price estimated by the consignee, plus ten per cent. Goods which have already paid import duty in Turkey do not require to pay upon entry into Egypt, unless there is a greater duty in Egypt, when the difference must be paid.[1]

Contraband is fully defined in Article 35 of the Regulations; and the zone of inspection on land is fixed at two kilomètres from the land frontier or the sea coast, as well as from the two banks of the Suez Canal and the lakes through which it passes, while the sea zone is ten kilomètres from the shore. The inspection of this district is entrusted to Egyptian officers. Within the ten kilomètre limit ships may be boarded and searched,[2] provided they are suspected of carrying contraband and are of less than 200 tons. Ships over 200 tons which are suspected of carrying contraband may not be boarded, but only watched; but, if they attempt to land their contraband cargo, they may be brought to the nearest port with a customs office. In every case a procès-verbal must be drawn up and sent to the consul interested. Outside the ten kilomètre zone no ship may be boarded, except a 200 ton vessel which has been pursued without interruption, the pursuit having commenced within the zone. Ships which are in an Egyptian harbour, of whatever tonnage, provided they are not ships of war, may be searched, provided notice has been given to the consul interested. If the consul does not attend, the search may be conducted in his absence, provided a procès-verbal is sent to him.[3] Within the customs zone on land search may be made subject to certain formalities.[4] If the search is to be made in a warehouse or shop which is independent from the domicile of the suspected merchant, notice should previously be given by the Egyptian official to the owner, or to his representative, or to his consul; this notice is sufficient. If, however, the shop or warehouse forms a part of the person's domicile, three conditions are neccsssary—the search must be made in virtue of a written order from the Director of Customs; a superior official of the customs, such as an inspector, must be present, or some one

[1] Customs Regulations, Article 18.
[2] *Ibid.*, Article 32.
[3] English Convention, 1889, Article 12. Customs Regulations, Article 41.
[4] English Convention, 1889, Article 12. Customs Regulations, Article 41.

delegated by the Governor; a copy of the order must be sent to the consul interested; this must mention the day and hour of the intended visit, which must be during daylight, and the copy must be sent at least four hours before the time appointed for the visit. If the consul, having been duly notified, does not appear, or send a representative at the time appointed, the search may commence. In cases where the house is distant more than an hour from the consulate, there is no need to notify the consul, but the search may be made in the presence of two persons of the same nationality as the suspected person. In all cases a procès-verbal must be drawn up and sent to the consul interested.

These last provisions of the Customs Regulations are an important exception to the privilege of inviolability of domicile guaranteed by the Capitulations; the constitution of the Court appointed by these Regulations to try offences against them is likewise an exception to the privilege of jurisdiction.[1] The Court competent to try offences against the Customs Regulations, whether committed by natives or foreigners, is the Customs Commission, and consists of the Director of Customs and three or four of the principal customs officials. The decision of this Commission, to be valid, must be communicated the same day to the consul interested. An appeal is allowed if notice of appeal is given to the Director of Customs within a fortnight of notification of the judgment to the consul; the appeal is heard by the Mixed Commercial Court.[2] If notification of appeal is not made within the fortnight, the judgment of the Commission becomes final. The sanctions[3] inflicted are confiscation and fine. Confiscation may include not only the contraband articles, but the means of transport, and other things used for the purpose of smuggling; the ship itself may be confiscated if specially employed for purposes of contraband. The fine is independent of confiscation, and the principals and accomplices of the fraud, as well as the owners of the goods, are liable in solidarity. If the offence is against the rules of importing, the fine is twice the duty; if against the rules of export, the fine is six times the duty. There are also a certain number of other offences which are dealt with specially, and for which there is a special fine.[4] The

[1] Customs Regulations, Article 33.

[2] This is due to the Turkish Regulations, as there are no Mixed Correctional Courts in Turkey.

[3] Customs Regulations, Articles 33, 34 and 35.

[4] *Ibid.*, Articles 37, 38, 39, 40.

Egyptian Government have a right of privilege, for the payment of fines and other expenses, over the goods, in reference to which the fine is due.[1]

Internal trade is, generally speaking, free to foreigners on the same conditions as to native subjects.[2] A special exception is made in reference to the trade in arms,[3] munitions of war, and explosives. An authorisation from the Egyptian Government is necessary before a business in such articles may be opened; the business must be carried on in the place designated, and the foreigner must keep special books in which are detailed all his transactions. In regard to all other articles trade is free, but the Egyptian Government are at liberty to impose any taxes in the consumption of articles thus produced, provided they are also imposed on the same articles when produced by natives. The Egyptian Government is also free to regulate, as it pleases, the interior trade in tobacco, tombac, salt, saltpetre, nitrate of soda, and hashish, and may even prohibit their trade entirely, as is the case with hashish.[4]

The Sudan is, generally speaking, treated as a part of Egypt for customs purposes.[5] The Sudan Government has, however, concluded a Customs Convention with the Italian Sudan, Eritrea; and it applies the same principles to the neighbouring States, Uganda, Abyssinia, the Congo Free State, and the French Congo. Imports from these States pay from five to eight per cent., while exports pay one per cent. Goods on transit pass free of duty through the Sudan. Goods landed for the Sudan at Egyptian ports pay duty there. The customs arrange-

[1] Customs Regulations, Articles 8 and 36.

[2] English Convention, 1889, Article 1.

[3] German Convention, Article 10, and Annexe.

[4] Hashish is regulated by a Decree of 10th March 1884. Laws and Decrees of 1884, p. 108, modified by Decrees of 28th May 1895 and 8th July 1894, and a Ministerial Order of 14th January 1895. The penalty for cultivation is £E.50 per feddan and £E.10 per kilo for importation, sale, or simple possession, all hashish seized being destroyed.

Tombac was a Government monopoly till 1901, when it was transferred to a company. Arms are dealt with by Decree of 27th April 1905, Laws and Decrees, 1905, p. 43; saltpetre by Decree of 22nd June 1893, Laws and Decrees of 1893, p. 179; gunpowder by Decree of 24th January 1895, Laws and Decrees of 1895, p. 23; salt and soda—a monopoly was established in 1879, and was ceded to the Salt and Soda Company in 1899, the price of salt being reduced; in the Budget of 1905 the monopoly was abolished and an excise duty of eight per cent. *ad valorem* was charged on the sale of salt, the price of which was still further reduced.

[5] The Sudan Convention of 19th January 1899. It will be remembered that this Convention expressly stipulates that the régime of the Capitulations shall not apply in the Sudan.

ments between Turkey and other parts of the Ottoman Empire were of a highly special character;[1] the only important point which remains is that foreign goods which have been imported into Egypt and paid duty there do not pay duty on being re-exported and sent to Turkey, unless the duty is higher in the latter, the same rule being applied in regard to goods first imported into Turkey and then re-exported to Egypt. Receipts of payment must accompany such goods, and accounts are kept under which the dues levied are credited, wherever received, to the country in which the goods are finally consumed. The products of either country pay full dues when imported into the other.[2]

The Capitulations exempt foreigners from the payment of all taxes other than customs dues. The principal taxes paid by unbelievers resident in Moslem territory were the Land Tax and the Capitation Tax or djizyah. The Land Tax was either the ushûr or the Kharâdj. It was seldom, however, that unbelievers were allowed to hold ushûri land, which alone paid the ushûr, or tax of a tenth; the Kharâdj was a much heavier burden, and might amount to fifty per cent. of the whole revenue.[3] A Musta'min who resided in Moslem territory for more than a year was liable for both the Capitation Tax[4] and the Kharâdj; in consequence the Capitulations required to expressly exempt foreigners from the payment of these taxes. There were, besides these two regular taxes, a large number of arbitrary taxes which are called Takâlîf Urfiah[5] or Awani.[6] The Capitulations also exempt foreigners from the payment of these under the title

[1] See the Arrangement made 18th December 1890, Egyptian Customs Code, p. 147.

[2] The Customs Arrangements with Persia are based on old Treaties with Turkey.

[3] See chapter xi.

[4] El-Multaka, a treatise of Mohammedan Law according to the Hanafite School. The Djizyah, or Capitation Tax, is "a sort of fine inflicted upon the unbeliever for his obstinacy in continuing in darkness." It should be collected, "in a humiliating and mortifying manner, by the collector, who remains sitting, while the tributary pays it while standing upright."—U.S.A. Consular Report, 1881, p. 33. For these taxes, see Hedayah, book ix., chap. vii.

[5] Militz, Manuel des Consuls, t. ii. section 2, p. 962. De Testa, "Recueil des Traités," Paris, 1864, t. i. Appendix No. I. p. 211, note v.

[6] "Such extra-legal imports were designated by the generic name of awani, from which is derived the French word avanie, from the Arabic hawân, meaning humiliation, or from the Arabic Iânah and Aûn, meaning contribution or help, *i.e.*, vexatious exactions. Many of these Awanis or Iânahs are mentioned in the Capitulations and abolished by them, as, for instance, in the French Capitulations the Khassab'yé, a tax upon slaughter-

"avanie," which is a French derivative of awani. The exemption as contained in the English Capitulations is as follows: "If any Englishman shall come hither either to dwel or trafique, whether hee be married or unmarried, he shall pay no polle or head money."[1] The French Capitulation of 1740, Article 67, is very similar: "Les Français qui sont établis dans mes Etats, soit mariés, soit non mariés, quels qu'ils soient, ne seront point inquiétés par la demande du tribut nommé Kharadj." In addition to customs dues, the Law of 1867, granting foreigners the right to own landed estate within the Ottoman Dominions, imposed the Land Tax on foreign owners.[2] In return for the right to own landed estate, foreigners are obliged "à acquitter toutes les charges et contributions, sous quelque forme et sous quelque dénomination que ce soit, frappant ou pouvant frapper par la suite les immeubles urbains ou ruraux."

The same privilege of exemption from taxation applies in Egypt; but as a matter of fact no tax of any importance exists at the present time in Egypt which is not paid by foreigners as much as natives. This is a direct result of the policy of the English Agent in Egypt, and has only been brought about of recent years. Before 1880 a large number of small but vexatious taxes existed in Egypt besides the greater taxes, such as the Land Tax and Capitation Tax. A report of the Minister of Finance of 17th June 1880[3] criticises

houses; raft, export duty; badg, transit duty; yassak-kouli, military exaction, and many others. . . ."—U.S.A. Consular Report, 1881, p. 33.

Creasy, vol. i. p. 173: "The Christian subjects of Mahometan power were bound to pay tribute; they were required to wear a particular costume to distinguish them from the true believers; and to obey other social and political regulations, all tending to mark their inferior position. In Turkey the terrible tribute of children was an additional impost on the Rayas. This last most cruel liability (which was discontinued two centuries ago), must be remembered; and so must the sufferings and shames caused by the horrible practices which we have been compelled to notice. . . ."

The Corvée or forced labour should also be noticed.

[1] English Capitulation, 1580, Article 14. The English Capitulation of 1675, Article 13, is similar: "That all Englishmen, and subjects of England, who shall dwell or reside in our Dominions, whether they be married or single, artisans or merchants, shall be exempt from all tribute."

The French Capitulation of 1740. Exemption from Mezeteric, Article 55; exemption from Kassabie, reft, vadi, etc., Article 10.

[2] Law of 16th June 1867, Young, vol. i. pp. 337 to 341; and the Protocol of 9th June 1868, Young, vol. i. pp. 341 to 345.

[3] Report of the Minister of Finance, 17th June 1880; Laws and Decrees of 1880, p. 22.

these taxes very severely: "A great number of taxes will not bear examination, some because of their inequitable assessment and their worse collection are in flagrant contradiction with the principles of equity . . . others because, in addition to being vexatious to the taxpayer, and interfering with the progress of commerce and industry, only produce for the Treasury sums which often do not suffice to cover the expense of collection." The future policy is to be "simplification and diminution of the expense of collection, relief for the taxpayer without prejudicing the Treasury." In pursuance of this policy the Capitation Tax was immediately abolished and many others reformed, such as the octroi duties.[1] Since then the same policy has been followed, with the further addition that foreigners should be placed on an equality with natives wherever possible; but before a tax may be imposed on a foreigner the consent of his Government is necessary. Customs dues, which amount to a quarter of the Egyptian revenue, are payable by foreigners in virtue of the Capitulations and the Customs Conventions. The Land Tax, as reformed in 1880 and 1891, is payable by foreigners in virtue of the Ottoman Law of 1867, although it is worthy of notice that not only did foreigners own land in Egypt before 1867, but they also paid the ordinary taxes on it. It is, however, better to base the imposition on the law of 1867 than on custom, which is not so definite. The House

[1] Note on the principal changes in taxation. The Capitation Tax, dating from 1875, was abolished in 1880; Octroi Duties were reformed in 1880, and finally abolished by Decree, 19th December 1901; Herd Tax, reformed in 1888 and abolished in 1890; Carriage and Beast of Burden Tax, reformed in 1880 and abolished in 1898; Bridge Tolls, abolished in 1896 and 1898; Loch Dues, abolished in 1900; Weighing Tax, abolished in 1889. The Salt Monopoly, reformed in 1879, was abolished in 1905, an excise duty of eight per cent. being imposed. The Budget of 1905, besides reducing the Customs dues in certain articles and abolishing the salt monopoly, has suppressed the tax on fishing-boats, as well as on ferries, on canals, and on the Nile. A Decree of 1884 arranged for a Professional Tax, which was agreed to in principle by the Powers in the Convention of London, 1885, but it was not till 1891 that the Powers consented to details, and by that time Egyptian finances had so much improved that the tax was no longer greatly needed.

The Corvée or forced labour may be considered as another tax due by Egyptians; this was regulated by Decree 25th January 1881, and in 1892 the Government were able to arrange for the payment of all labour performed formerly by corvée, except the duty of guarding the Nile banks during flood, a duty which is so regulated as to cause as little injustice to the people as possible.

It may be said that the only taxes now due are: Customs dues, land tax, house tax, date-palm tax, and the taxes consented to for the municipalities.

Tax as regulated by the Khedivial Decree of 13th March 1884, was agreed to by the Powers in the Convention of London, 17th March 1885, Article 31. In addition to these the Powers, by consenting to the Khedivial Decree of 5th January 1890, which creates the municipality of Alexandria, have agreed to the imposition of certain taxes on the foreign citizens of Alexandria. Apart from these four exceptions the Mixed Courts have held that no tax can be imposed on foreigners by the Egyptian Government without the consent of their own Governments, and they have held that if any other tax is claimed by the Egyptian officials, or if more is claimed than is due, the foreigner, thus injured, is not only entitled to reimbursement, but also to the interest on the sum paid from the time of payment.[1]

The privileges which remain are the right to apply the national law of a deceased foreigner in regulating his succession, and the immunity from local jurisdiction and from the application of the local law. The latter of these privileges is of such importance that it is better to discuss it in a chapter by itself. The privilege in reference to successions is, as we have seen, in accordance with the Mohammedan Law in reference to Musta'min: "When a Moostamin dies within the Mussulman territory, leaving property in it, and heirs in his own country, the property is reserved for them until they establish their right to it."[2] The Capitulations of Saladin and Kaït Bey confirmed this right for the Pisans and Florentines; it is also found in all the Ottoman Capitulations. The English privilege is contained in Article 9 of the Capitulation of 1580: "If any Englishman shall make his will and testament, to whom soever by the same hee shall give his goods, the partie shall have them accordingly, and if hee die intestate, hee to whom the consull or governour of the societie shall say the goods of the dead are to bee given, hee shall have the same."[3]

[1] See Judgments of the Mixed Courts: "Les tribunaux mixtes sont compétents pour connaitre de la demande en restitution de l'impôt sur la propriété bâtie d'un étranger, dont la perception a eu lieu d'une manière non conforme au décret du 13 Mars 1884." Alexandria, 15th January 1890, B. L. J., II. p. 103. See also Alexandria, 4th March 1891, B. L. J., III. p. 247. Alexandria, 28th December 1892, B. L. J., IV., and Alexandria, 20th December 1893, B. L. J., IV. Also a case of 20th April 1883.

[2] Baillie, p. 175. See above, chapter v. It is also in conformity with a widely recognised principle of Private International Law.

[3] See also the English Capitulation of 1675, Article 26. That in case any Englishman, or other person subject to

In considering these privileges granted by the Ottoman Capitulations, we have to ask whether they are still essential, or whether, in so far as they are concerned, the Capitulations might not be abolished in Egypt. The right to enter Egyptian territory and to trade there has been accorded by Customs Conventions, and the right so accorded expressly says that the foreigner shall have the same right as the native subject.[1] The Capitulations have thus been superseded on this point. The privileges of religious belief and worship are so fully accorded in Egypt to all non-Moslem subjects that the position of the non-Moslem foreigner is probably amply secured without any special stipulation; in fact, Egyptian practice, as we have seen, has gone further in its toleration than the Capitulations themselves. The ever-increasing intercourse between Egypt and Europe will only tend to develop their spirit of toleration, and that intercourse has already done away with the necessity for any express stipulation in reference to the dress and habits of non-Moslems; in fact, the modern Egyptian, unfortunately from the artistic point of view, has proved himself only too ready to adopt the dress of the European. Exemption from taxation, we have shown, only exists in name in Egypt. While the customs dues are now fixed by Customs Convention, certain taxes have been consented to in international agreements by the Powers; and, in fact, there is no tax of any importance which is not due just as much from foreigners as Egyptian subjects; yet, on the other hand, should the present phenomenal success of Egypt unfortunately receive a check, and new taxes be imposed, there is not the slightest doubt that this privilege would act as an important guarantee to the Powers that the rights of their subjects would not be unduly interfered with. Much may be said, from the

that nation, or navigating under its flag, should happen to die in our sacred dominions, our fiscal and other officers shall not, upon pretence of its not being known to whom the property belongs, interpose any opposition or violence, by taking or seizing the effects that may be found at his death, but they shall be delivered up to such Englishman, whoever he may be, to whom the deceased may have left them by his will; and should he have died intestate, then the property shall be delivered up to the English consul, or his representative, who may be there present; and in case there be no consul or consular representative, they shall be sequestered by the judge, in order to his delivering up the whole thereof, whenever any ship shall be sent by the ambassador to receive the same.

Articles 46 and 59 refer to the succession of interpreters, whether foreign or native subjects.

[1] English Customs Convention of 1889, Article 1.

Egyptian point of view, upon the right of a State to tax all persons resident within its territory and benefiting from its government; and much also may be said of the difficulties encountered by Egypt in obtaining the consent of the Powers in reference to taxes in the past—for instance, in reference to the professional tax—but in spite of all this it would be too much to ask the Powers to abandon their present guarantees without receiving others in their place. The rule in reference to successions might be left to the application of Moslem law, especially as it already forms a part of the ordinary Egyptian civil law: "Successions are regulated according to the personal statute of the deceased;" "Capacity to make a will and the form of the will are regulated according to the personal law of the testator."[1] The privilege of Inviolability of Domicile is, however, in a different position. Even in the extended form, as defined by Article 70 of the French Capitulation of 1740, it would be very rash of the Powers to abandon this right. Undoubtedly the right, as conceded by the Ottoman Capitulations, goes further than the common practice of Europe, and this modification is still further extended in Egypt, except in reference to search by customs officials within the special zone; yet it would be very unwise to abandon the right so long as the rank and file of the Egyptian executive officials remain in their present position.[2] This privilege is one which is perhaps more frequently abused than another, and under cover of it the less reputable members of the foreign community are able to act in a manner which does not tend towards the moral good of society;[3] on the other hand, without this privilege the more respectable members of society might conceivably suffer considerable inconvenience at the hands of a very ignorant police force. The present abuses of the privileges might be met by the acceptance of the Powers of more

[1] Articles 54 and 55 of the Egyptian Civil Code; the corresponding articles of the Mixed Civil Code are 77 and 78.

[2] See Lord Cromer's Reports under title "Police."

[3] "I have said that the rights conferred by the Capitulations are liable to abuse; of the truth of this statement there can be little doubt. Those rights have, indeed, at times been turned to such base uses as that of affording protection to the smuggler, the keeper of the gambling-hell, the vendor of adulterated drink, and their congeners. The problem which now lies before the British and Egyptian Governments is to evolve a system which, whilst maintaining everything in the existing law and practice which is essential to the well-being of the country, will put an end to the abuses to which I have alluded above."—Lord Cromer's Report, 1904. Egypt, No. 1, 1905.

stringent police regulations in reference to certain classes of the foreign community. In this way the privilege would remain as it was originally intended, as a necessary protection for the respectable foreigner resident within the State, on whom the commercial interests of the country so largely depend. Thus, although the privilege in reference to religion and dress might be abandoned, in view of the more tolerant and civilised attitude of the modern Egyptian, and although the right of entry is secured by Customs Convention, and the privilege of succession by the Egyptian civil law, yet the privileges of immunity from taxation and inviolability of domicile should be preserved, until the rights they guarantee are fully safeguarded by some other means.

There are undoubtedly many of the provisions of the Capitulations which are now obsolete; thus the clauses forbidding piracy, the arresting of English ships, and the enslaving of Englishmen should be unnecessary in view of ordinary international practice.[1] The clauses, and they are frequent, which state that if a criminal or debtor escapes, neither his consul nor any other fellow-countryman shall be held liable, unless they are legally bound as sureties, are also obviously obsolete; but they are interesting as a reminder of the fact that in earlier times consuls were looked upon, not so much as representatives of a foreign sovereign, but rather as hostages responsible for the delinquencies of their fellow-countrymen. Thus an Arab writer, Khalîb Zâhiri, referring to the consuls in Alexandria, says: "In that city there are consuls, that is to say, great personages from among the Franks of different nations; they are there as host-

[1] "If after the time and date of this privilege, any pirates or other free governours of ships trading the sea shall take any Englishman, and shall make sale of him, either beyonde the sea, or on this side of the sea, the matter shall be examined according to justice, and if the partie shalbe found to be English, and shall receive the holy religion, then let him freely be discharged, but if he wil still remain a Christian, then let him be restored to the Englishmen, and the buyers shall demand their money againe of them who solde the man."—Article 19, English Capitulation of 1580.

"If either the great or small ships shall in the course of their voyage, or in any place to which they come, bee stayed or arrested, let no man continue the same arrest, but rather helpe and assist them."—Article 20, English Capitulation of 1580.

"If any slave shall be found to be an Englishman, and their Consull or governour shall sue for his libertie, let the same slave be diligently examined, and if hee be found in deed to be English, let him be discharged and restored to the Englishmen."—Article 13, English Capitulation of 1850. See also Capitulation of 1675, Articles 47

ages; whenever the nation of any one of them does something hurtful to Islam, the consul is called to account."[1] There is a clause of this nature in the Capitulation granted to the Florentines by Kaït Bey.[2] That contained in the English Capitulation of 1580 is to the following effect: "If any one of them shall commit any great crime and flying thereupon cannot be found, let no man be arrested, or detained for another man's fact, except he be his suretie."[3] In reference to the free passage of foreign vessels within Ottoman waters, the International Treaties referring to the Dardanelles, Bosphorus, and Black Sea should be recalled, since certain of these modified this right, at least for a time.[4] From the point of view of the International lawyer there are two clauses of the French Capitulation which are of interest.[5] The first declares both Frenchmen and their goods travelling on enemy ships to be inviolable, a clause which may be compared with Article 3 of the Declaration of Paris: "La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi." Further, Frenchmen carrying provisions to an enemy-State are inviolable, and the provisions may not be seized. The word "ennemi" need not, however, have the same significance in Turkey as that intended in the Declaration of Paris, since all non-Moslems are, according to Mohammedan Law, enemies or harbee.

Consuls, appointed to represent foreign States within the Ottoman

and 55, piratical acts forbidden and property taken to be restored.

In reference to slavery, Turkey was a party to the Brussels Convention, and Egypt has entered into an International Agreement on the subject with England, 21st November 1895, replacing former Convention of 1877. See Gélat, 1st series, vol. i. p. 275, and Gélat, 3rd series, vol. i. p. 584.

[1] Quoted in the U.S.A. Consular Report, 1881, p. 35.

[2] Article 18. "Should a Moslem have any just claim against a Florentine, either a business claim or a criminal cause, the other Florentine shall not, for this reason, be held for the debts of a fellow-countrymen, nor judicially, nor the father for the son, nor the son for the father."

[3] English Capitulation, 1580, Article 12, also Article 8 of same Capitulation and English Capitulation, 1675, Article 58.

[4] The Convention of London, 1841; Treaty of Paris, 1856; Convention of London, 1871; and the Congress of Berlin, 1878.

[5] Articles 4 and 5 of French Capitulation of 1740.

Article 4. "Si des marchands français étaient embarqués sur un bâtiment ennemi pour trafiquer, comme il serait contraire aux lois de vouloir les dépouiller et les faire esclaves parce qu'ils se seraient trouvés dans un navire ennemi, l'on ne pourra, sous ce prétexte, confisquer leurs biens, ni faire esclaves leurs personnes, pourvu qu'ils ne soient pas en acte d'hostilité sur un bâtiment corsaire, et qu'ils soient dans leur état de marchands."

Empire, exercise important duties which are not usually within the functions of the Consular Service; in return they enjoy certain special privileges. The privilege of exemption from taxation includes, for the Consular Service, exemption from the payment of customs dues; inviolability of domicile is secured, as in the case of Ambassadors, under the right to fly the national flag; and the privilege of jurisdiction is of a very special nature. The privilege in reference to Customs dues is regulated by a Circular Note of the Sublime Porte to the foreign Legations, 12th January 1853,[1] and an Ottoman Règlement of 15th to 27th July 1869.[2] Quoting from the latter of these two documents: "Consuls-General, consuls, and vice-consuls not engaged in trade are exempted from all customs duties on articles or effects intended for their *personal use*. Their cases or packages shall not be opened or submitted to any search." "Consuls-General, consuls, and vice-consuls engaged in trade are exempted from customs duties on articles or effects intended for their personal use up to the limit of an annual value of 25,000 piastres for Consuls-General, 20,000 piastres for consuls, and 10,000 piastres for vice-consuls;" "furniture and other articles imported on the first establishment of a consular officer are not comprised in the sums above-mentioned." Beyond these sums, and in reference to merchandise, members of the Consular Service are governed by the ordinary regulations. Special declarations are used in the case of members of the Consular Service. "The exemption from customs duties enjoyed under this declaration by Consuls-General, consuls, and vice-consuls not engaged in trade shall extend also, in the case of each Consulate-General, to two superior officers attached to it, and in the case of each consulate to one such officer, provided always that these officers belong to the category of functionaries who are appointed by royal decree, and who are absolutely prohibited from engaging in trade."

The article of the Capitulations on which the other two special privileges of the Consular Service are based is:[3] "That the Consuls appointed by the English Ambassador in our sacred dominions, for the protection of their merchants, shall never, under any pretence,

[1] De Testa's "Recueil des Traites de la Porte Ottomane," t. i. pp. 215 to 217.

[2] Législation Ottomane, Constantinople, 1874, Part iii., p. 408.

[3] English Capitulation, 1675, Article 25.

be imprisoned, nor their houses sealed up, nor themselves sent away; but all suits or differences in which they may be involved shall be represented to our Sublime Porte, where their Ambassadors will answer for them." And, "Les pachas, cadis et autres commandants ne pourront empêcher les consuls, ni leurs substituts par commandement, d'arborer leur pavillon, suivant l'étiquette, dans les endroits où ils ont contume de résider."[1] Ottoman authorities can never, under any pretext, enter the consulate without the consent of the consul; and his correspondence and archives are included within this inviolability. The special consecration of this privilege of inviolability of domicile is necessary in Turkey since the consul may not reside in the official consulate. Custom based on the first of these two quotations, and on other clauses of the Capitulations of a similar nature,[2] has placed the privilege of jurisdiction, as it affects consuls in the Ottoman Empire, in a special position.[3] On penal matters the Consuls are completely exempt from the jurisdiction of all local courts, whatever the nationality of the party injured. In civil cases they are also exempt from the jurisdiction of the local courts, but they may renounce this privilege either expressly or tacitly; and in the case of an action in reference to immovable property, or when the consul engages in commerce, the special privilege no longer exists, but the case is tried as it would be if the consul had been an ordinary member of the foreign community. In cases where the consul is exempt from the jurisdiction of the local courts, the rules laid down by his national law for the trial of Ambassadors in a similar situation apply. In Egypt the Mixed Courts decline all competence in a case in which a member of the foreign Consular Service is a party: "Les consuls et vice-consuls, leurs familles et toutes les personnes attachées à leur service ne sont justiciables des tribunaux de la réforme ni pour leurs personnes, ni pour leurs biens."[4]

Ambassadors and consuls, as we have seen, are entitled under the Capitulations to dragomen, janissaries, interpreters, and other servants, and these persons are granted certain of the privileges accorded by the Capitulations, even when they are native subjects. The Ottoman

[1] French Capitulation, 1740, Article 49.

[2] French Capitulations of 1604, Article 25; 1740, Article 16. Dutch Capitulation of 1680, Article 6.

[3] See Du Rausas, vol. i. pp. 481 to 489.

[4] Alexandria, 4th April 1889, B. L. J., i. p. 114.

Law of Protection of 1863, however, limited the number of these persons to four dragomen and four cawas for a Consul-General, three dragomen and three cawas for a Consul, and two dragomen and two cawas for a vice-consul. These persons further required a certificate from the local governor consenting to the appointment. Armed with this certificate, they were entitled to the privileges of protected subjects. The extent of their right to benefit from the special privilege of exemption from the payment of customs dues has already been mentioned. In regard to the privilege of jurisdiction the Egyptian Mixed Courts have decided: "Le drogman effectif d'un consulat jouit de l'immunité de juridiction vis-à-vis des tribunaux mixtes sans distinguer si ses fonctions sont rétribuées ou gratuites. L'exception basée sur le défaut de juridiction peut être soulevée en tout état de cause."[1] But the certificate from the Egyptian public authority is essential for native subjects: "Les sujets locaux désignés vice-consuls, drogmans, ou agents consulaires par des puissances étrangères ne sont investis de la jouissance des immunités et prérogatives diplomatiques que par la reconnaissance, par le gouvernement égyptien, de leur qualité en vertu d'un bérat régulier. Un sujet local, drogman d'un consulat étranger, non reconnu en cette qualité par le gouvernement, ne saurait prétendre à l'exemption de la juridiction des tribunaux mixtes."[2]

[1] Alexandria, 2nd April 1890, B. L. J., ii. p. 180.

[2] Alexandria, 23rd June 1890, B. L. J., ii. p. 191. See also Alexandria, 15th January 1890, B. L. J., ii. p. 104.

CHAPTER XIV

THE PRIVILEGES OF JURISDICTION AND LEGISLATION BEFORE THE INSTITUTION OF THE MIXED COURTS IN EGYPT

The privileges of jurisdiction and legislation are the most important of the grants contained in the Capitulations. The former has undergone considerable development, especially in Egypt, while the reform of the latter has now become one of the most important problems of that country. The history of the privilege of jurisdiction may be conveniently divided into three parts—the privilege as conceded by the Capitulations and developed under the Tanzimat of Turkey; the extension given to that privilege by custom in Egypt; and the reforms effected by the institution of the Egyptian Mixed Courts. In considering this development, it is further convenient to discuss it according as the privilege is concerned with cases arising between foreigners of the same nationalty, between foreigners of different nationalities, or between natives and foreigners. In regard to cases between foreigners of the same nationality there has been practically no change; and the system adopted in Egypt and Turkey is, and has been, the same as that adopted in the Barbary States.[1] In reference to the other two sets of cases there has, however, been considerable development. The concession as contained in the Capitulation of Saladin to the Pisans is: "I have also given orders to my Bajuli, both in the past and in the future, that they cannot occupy them-

[1] The Capitulations entered into between England and the Barbary States all contain a similar immunity from the local jurisdiction, in reference to cases arising between Englishmen. Thus, Tripoli, 18th October 1862, Article 7. "That the subjects of His Majesty in difference among themselves, shall be subject to no determination but that of the Consul."—Hertslet, vol. i. p. 127. See also Algiers, 10th April 1682, Article 15; Morocco, 23rd January 1721, Article 9; Tunis, 30th August 1716, Article 8, in the same volume. For the earlier Capitulations between Egypt and Pisa or Florence, see Amari's collection already referred to.

selves with any litigation or matter between the merchants without their consent." The Capitulation of Kaït Bey[1] distinguishes between an action arising between two Florentines and one arising between a Moslem and a Florentine. The first could only be heard by the Florentine consul, "in accordance with the legal custom of the Florentines," "and none of the governors or Moslem judges may interfere"; while the second was to be heard "in the tribunal of the president of the custom house," with appeal to the Sultan himself. The Capitulation does not mention penal actions nor disputes which might arise between Florentines and other foreign merchants. Thus the privilege, as originally granted, accorded to foreigners the right to be tried by their own consuls according to their own law, while in disputes with natives their cases should be heard by a special tribunal, and not by the ordinary Moslem courts.

It is frequently stated that this privilege of jurisdiction is based on the principles of exterritoriality. It is, however, more logical to admit that the origin of this right was independent of this modern fiction, and was rather based upon what proved to be a practical solution of a difficulty which, otherwise, would have led to a denial of justice. There was, at the time of which we are writing, a natural distrust of foreigners, and the legal systems of the different States made little or no provision for cases in which foreigners were interested; nor were the local judges familiar with the laws of foreign countries. Even in European States, where special permission had been given to foreign merchants to enter their territories and carry on trade, an express guarantee had to be given that justice would be freely and impartially administered to foreign merchants. Thus we find a clause in the Carta Mercatoria of 1303[1] specially

[1] "That no Moslem can accuse or carry on a suit with the Florentine merchants except in the tribunal of the president of the custom house; and should the cause not be terminated by such president according to the rules of justice, it is our will that the revision and decision thereof be referred to our illustrious tribunal."

Cf. Capitulations with Barbary States.

"Should any controversy or disagreement arise between the said Florentines, none of the governors or Moslem judges may interfere in their affairs, but jurisdiction therein belongs to the consul of the Florentines; which is to be brought in such cases in accordance with the legal custom of the Florentines."—Capitulation of 10th December 1488, Articles 11 and 14.

[2] Hakluyt, vol. i. pp. 327 to 338. "The Great Charter granted unto forreine marchants by King Edward the first, in the 31 yeere of his reigne commonly called Carta Mercatoria, Anno Domini 1303," Articles 5 and 8.

See also "A Copie of the first Privileges graunted by the Emperor of

providing for this situation in England: "We will that all bayliffs and officers . . . shall doe speedie justice from day to day without delay according to the law of Marchants to the aforesayd marchants when they shall complaine before them, touching all and singular causes, which may be determined by the same law." And lest this should not prove sufficient, the chart further provides against the danger of the ordinary judges not being perfectly fair to foreigners: "We will and we grant that some certaine faythfull and discreete man resident in London be appointed to doe Justice to the aforesaid marchants, before whom they may have their sutes decided, and may speedilie recover their debts, if the Sheriffes and Maior should not from day to day give them speedy justice. . . ." In Moslem countries the difficulty was even greater, since Moslem Law and Moslem courts were, strictly speaking, for the use of the Faithful only. The problem resembled that of Rome when the jus civile could only apply to the citizen; the solution was also similar, since the foreigner settled his disputes by his own law. The greater difficulty was in reference to disputes between natives and foreigners, and for these special courts had to be instituted.

It was a very natural solution that disputes between foreigners of the same nationality should be decided by their own judges in accordance with their own law, since these merchants lived together in colonies apart from the Moslems, either in some special quarter cut off from the rest of the city by its high walls, or in funduks secured by gates which were closed at nightfall. Here, within their funduk or quarter, the foreigner lived his own life in accordance with his national habits, and here he had his own church, his bath, his

Russia to the English Marchants in the yeere 1555."—Hakluyt, vol. ii. pp. 297 to 303.

Article 4. "Item, we give and graunt unto the saide Marchants and their successors, that such person as is, or shall be commended unto us . . . to be their chiefe Factor within this our Empire . . . and shall and may minister unto them, and every of them good justice in all their causes, plaints, quarrels, and disorders between them . . . and to set and levie upon all, and every Englishman, offender or offenders, of such their acts and ordinances made, and to be made, penalties and mulcts by fine or imprisonment."

Article 7. "Item, we graunt and promise to the saide Marchants, and to their successors, that if the same Marchants or any of them shall bee wounded or (which God forbid) slaine in any part or place of our Empire or dominions, then good information thereof given, Wee and our Justices and other officers shall execute due correction and punishment without delay, according to the exigence of the case, so that it shall be an example to all other not to commit the like. . . ."

bakery, and his steel balance; while over the colony, and responsible for it, was the consul. Under these conditions, and especially as Moslem principles favoured the system of the personalty of the law, it was only logical that the foreigner should decide his own disputes in accordance with his own law. The same system may be seen fully developed in Turkey in reference to the organisation of the non-Moslem communities. There the Rayah were, and to a certain extent still are, as much outside the Mohammedan Law as the foreigner, and as little subject to the jurisdiction of the Moslem Courts, and in consequence were allowed their own courts which applied their own law. The system of the personalty of the law, however, fails when a dispute arises between persons of different nationality. If an action was brought by a native against a foreigner, which of the personal laws was to apply, and what court was to apply it? These questions have been answered by a system built up by European International Jurists; but in the Egypt of 1488 these doctrines were unknown and a practical solution had to be found. Since the ordinary Moslem courts could not be competent, a special tribunal had to be discovered, and the practical nature of the solution is evidenced by the choice of "the president of the custom house" as this special judge—a man familiar with foreigners, with the nature of the disputes which would most commonly arise, and possibly acquainted with certain, at least, of the foreign languages. But that justice might be fully guaranteed, an appeal was allowed to the Sultan himself.

It should not cause surprise that penal cases should not, at this early date, be expressly mentioned, since, as far as foreigners were alone concerned, their consuls would undoubtedly be held responsible for the maintenance of order within their own quarters. Outside these quarters the local authorities would exercise what authority they possessed, the only control being such influence as the consuls might be able to exercise in the interests of their fellow-countrymen. Too frequently the indefiniteness of this system must have proved to the disadvantage of foreigners, but in the undeveloped state of Egypt at the time more could not be expected. That Moslems were apt to take the law into their own hands is suggested by an article of Kaït Bey's Capitulation: "Should a Moslem have any just claim against a Florentine, either a business claim or a criminal cause, the other Florentines shall not, for this reason, be held for the debts of a fellow-countryman." Civil disputes between foreigners of different

nationalities are also left without special regulation. This omission, however, is another argument in favour of the practical character of the privilege of jurisdiction. Such disputes cannot have been of common occurrence, as the majority of commercial transactions must have taken place between natives and foreigners; while, on the other hand, the number of rival foreign colonies could not have been great, since several States shared the same consul and funduk, and others, who had no consul, allowed their subjects to place themselves under the protection of the representative of some other State.

The privilege of jurisdiction as granted by the earlier Ottoman Capitulations was, in reference to disputes between foreigners of the same nationality, the same as it had been in the original Capitulations. The foreign consul was competent, and he decided the case in accordance with his national law.

The privilege is thus stated, in regard to Englishmen, in the Capitulation of 1580:[1] "If any variance or controversie shall arise among the Englishmen, and thereupon they shall appeale to their consuls or governors, let no man molest them, but let them freely doe so, that the controversie begunne may be finished according to their owne customes." In reference to disputes arising between foreigners and natives, the case was apparently to be decided by the Kadi, but the foreigner's position was safeguarded by two important guarantees. In the first place, all contracts must be established by authenticated documentary evidence, thus providing against the danger of suborned witnesses; and, secondly, the consular dragoman of the foreigner must be present during the case. The English Capitulation of 1580 deals with the question of evidence in Article 10: "If the Englishmen or the merchants and interpreters of any places under the jurisdiction of England shall happen in the buying and selling of wares, by promises or otherwise to come in controversie, let them go to the Judge, and cause the matter to be entered into a booke, and if they wil, let them also take letters of the Judge testifying the same, that men may see the booke and letters, whatsoever thing shall happen, and that according to the tenour thereof the matter in controversie and in doubt may be ended: but if such things be neither entered in booke nor yet the persons have taken letters of the Judge, yet he shall admit no false witnesse, but shall execute the Law according to justice, and shall not suffer them to be abused."

[1] English Capitulation, 1580, Article 17.

The privilege is even more fully described in the first French Capitulation.[1] "Qu'en cause civile entre les Turcs, Kharadjgujar ou autres sujets du Grand Seigneur, les marchands et sujets du Roi ne puissent être demandés, molestés ni jugés, si lesdits Turcs, Kharadjgujar et sujets du Grand Seigneur ne montrent écriteur de la main de l'adversaire ou hodget du cadi, baïle ou consul; hors de laquelle écriteur ou hodget ne sera valable ni reçu aucun témoignage du Turc, Kharadjgujar, ni autre, en quelque part que ce soit des états et seigneuries du Grand Seigneur; et les cadi et sous-bachi et autres ne pourront oüir ni juger les dits sujets du Roi, sans la présence de leur drogman." That the presence of the consular dragoman was essential to the validity of the case is clearly shown by the English Capitulation,[2] which expressly says that, "if their interpreter shalbe at any time absent being occupied in other serious matters, let the thing then in question be stayed and differed till his comming, and in the meane time no man shall trouble them." The Dutch Capitulation of 1613, Article 36, sums up the matter very briefly: "Si quelqu'un avait un procès avec un Néerlandais et se présentait au cadi, cellui-ci n'écontera pas la plainte, si le drogman du Néerlandais n'y est pas présent."

Commercial disputes between foreigners and natives were thus, under the earlier Ottoman Capitulations, decided by the Kadi, the presence of the consular dragoman being essential. But what law did the Kadi apply? It is probable that the question of the law to be applied did not arise at this time. At first the transactions entered into between foreign merchants and natives would be ready-money bargains; and later, when credit was granted, provision was made for the presence of reliable documentary evidence. In either case the question would be one of fact, Had the bargain been made? and later the claimant could only be successful if he produced documentary evidence to support his claim. The judge was thus more in the position of an arbiter, and the question of the law to be applied by him would not arise.

Commercial disputes between foreigners of different nationalities were not yet provided for, and the question was not likely to cause difficulty until a larger number of States had consuls and Capitulations of their own, and until the foreign colonies increased. But

[1] French Capitulation of 1535, Article 4.

[2] English Capitulation of 1580, Article 16.

criminal cases arising between foreigners and natives were dealt with by the French Capitulation of 1535, Article 4: "Qu'en causes criminelles les dits marchands et autres sujets du roi de France ne puissent être appelés des Turcs, Kharadjgujar ni autres devant le cadi, ni autres officiers du Grand Seigneur, et que les dits cadi ni autres officiers ne les puissent juger; mais sur l'heure les doivent mander à l'Excelte-Porte, et, en l'absence d'icelle Porte, au principal lieutenant du Grand Seigneur, là où vaudra le témoignage du sujet du roi et du Kharadjgujar du Grand Seigneur." Later it would appear from the English Capitulation of 1675 that criminal actions against foreigners were brought before a mixed committee, consisting, on the one hand, of certain Ottoman officials, and, on the other, of the ambassador or consul of the accused foreigner; and further, that this committee sat rather as a council of arbitration, to decide the amount of the damages to be paid to the injured party, than as a court to punish the offender. "That in case any Englishman, or other person navigating under their flag, shall happen to commit manslaughter, or any other crime, or be thereby involved in a lawsuit, the governors in our sacred Dominion shall not proceed to the cause until the ambassador or consul shall be present, but they shall hear and decide it together without their presuming to give them any the least molestation, by hearing it alone, contrary to the holy law and these capitulations."[1] The question being one of fact, namely, to determine the amount of damages due, there would be no question as to the application of any particular system of law; if, however, punishment had to be inflicted, it would appear from certain later Capitulations that this had to be entrusted to the consuls, and probably imprisonment was the usual form which this punishment took. "Lorsqu'il sera nécessaire de faire comparaître les sujets de S. M. I. et R. devant les tribunaux ottomans, ils ne s'y rendront que du sçu du consul et de l'interprète, et, lorsque le cas exigera qu'ils soient emprisonnés, les dits consuls et interprètes pourront les faire conduire en prison."[2]

[1] English Capitulation of 1675, Article 42.

[2] Austrian Capitulation of 1718, Article 5; see also the Treaty of Peace between Turkey and the Two Sicilies of 1740, Article 6: "Les gouverneurs et autres officiers de l'Empire Ottoman ne pourront faire emprisonner aucun de nos sujets, ni le molester ou insulter sans raison; et en cas que quelqu'un de nos sujets vint à être emprisonné, il sera consigné à nos ministres et consuls, lorsqu'ils le requerant, pour être châtié selon qu'il le mérite." —Noradounghian, vol. i. p. 272.

The arbitration council for the trial of criminal cases between foreigners and natives was in its composition more diplomatic than judicial, and we find that during the seventeenth century this diplomatic method of solution gained ground. This is evidenced by the English Capitulation of 1675:[1] "That if an Englishman, or other subject of that nation, shall be involved in any lawsuit, or other affair connected with law, the judge shall not hear or decide thereon until the ambassador, consul, or interpreter, shall be present; and all suits exceeding the value of 4000 aspers shall be heard at the Sublime Porte, and no where else." This clause is repeated in a later article of the same Capitulation with an additional clause referring to the case of an Englishman who is arrested "on the point of departure by any ship by reason of any debt or demand upon him, if the consul of the place will give bail for him, by offering himself as surety until such shall be decided in our Imperial Divan, such person so arrested shall be released, and not imprisoned or prevented from prosecuting his voyage, and they who claim anything from him *shall present themselves in our Imperial Divan, and there submit their claims, in order that the Ambassador may furnish an answer thereto.*" The Sublime Porte, or Divan, was the Emperor's council and not a judicial body; this council, with the assistance of the ambassador, was to settle the cases specified. The case was thus settled diplomatically, as between the Ottoman Government and the foreign ambassador. The same practice was adopted in the Moslem States of North Africa. Article 15 of an English Capitulation with Algiers of 10th April 1682,[2] is in the following terms: "That the subjects of His said

[1] English Capitulation, 1675, Articles 24 and 49. The French Capitulation of 1673, Article 12, is to the same effect: "Si quelqu'un de nos sujets a quelque procès contre quelque Français, dont la somme soit de plus de 4000 aspers, nous défendons qu'il soit fait justice autre part que dans notre Divan."

Other Capitulations are in similar terms, but certain of them state the sum at 3000 or 500 aspers. An asper had the value of about the fifth of a penny.

[2] Hertslet, vol. i. p. 62. The clause of the Capitulation with Tripoli of 18th October 1662, Article 7 is similar: "That the consul, or any other subject of the King of Great Britain, etc., in the matter of difference, shall not be liable to any other judgment than that of the Dey." As are also those of Morocco, 23rd January 1721, Article 9, and Tunis, 30th August 1716, Article 8. Hertslet, same volume.

There is a French Treaty of 9th November 1742, Article 16 of which is in similar terms: "S'il arrive quelque différend entre un Français et un Turc ou un Maure, il ne pourra être jugé par les juges ordinaires, mais bien par le conseil des-dits Bey, Dey et Divan, et en présence dudit consul."

Majesty in Algiers, or its territories, in matter of controversy shall be liable to no other jurisdiction but that of the Dey or Duan, except they happen to be at difference between themselves, in which case they shall be liable to no other determination but that of the consul only."

As commerce increased between the European States and Turkey, the number of foreign colonies increased, and States found it advisable to emancipate themselves from the "protection" of France and England, appoint their own consuls, and obtain Capitulations in their own name. A natural result of this separation of the different foreign colonies would be to raise the question, which had been up till then left dormant, as to the jurisdiction which should apply in disputes between foreigners of different nationality. The later Capitulations declared that foreigners having disputes with other foreigners of a different nationality might submit them to be settled by their ambassadors, and that the local courts should only be competent if both parties mutually agreed to accept their jurisdiction. This privilege is stated in the French Capitulation of 1740:[1] "S'il arrive que les Consuls et les négociants français aient quelques contestations avec les Consuls et les négociants d'une autre nation chrétienne, il leur sera permis, du consentement et à la réquisition des parties, de se pourvoir par devant leurs Ambassadeurs qui résident à ma Sublime-Porte; et, tant que le demandeur et le défendeur ne consentiront pas à porter ces sortes de procès, par-devant les pachas, cadis, officiers ou douaniers, ceux-ci ne pourront pas les y forcer, ni prétendre en prendre connaissance." In deciding in this way the Capitulations were probably endorsing what had already come to be accepted as the universal custom in such cases. When a dispute arose between foreigners of different nationalities it is probable that, if amicable negotiations failed, and they did not wish to submit themselves to the local courts, they appealed to their consuls as arbiters; and, if the consuls could not bring about a satisfactory

[1] French Capitulation, 1740, Article 52; the Russian Capitulation of 1783, Article 58, is very similar: "Lorsque les consuls ou les négociants russes auront quelque procès avec des consuls ou des négociants d'une autre nation chrétienne, ils pourront, s'ils y consentent, faire juger ce procès par le ministre de Russe auprès de la Sublime-Porte; car si les deux parties ne voulaient pas se soumettre aux jugements des pachas, cadis, officiers ou douaniers de l'Empire Ottoman, lesdits pachas et autres ne pourront les y contraindre, et ne s'ingèreront dans leurs affaires, à moins qu'il n'y ait le consentement des deux parties contendantes."

settlement, recourse was had to their ambassadors, and the question was settled diplomatically.

This diplomatic method of settling disputes between foreigners of different nationalities was modified in the nineteenth century by the application of another custom, whereby the maxim "actor sequitur forum rei" was adopted in the sense that the defendant's consul was held to be exclusively competent to try the case. This practice was itself modified for a certain time as the result of a concurrent procedure based on a verbal Convention entered into by the Embassies of Austria, France, England, and Russia. This second procedure was itself a partial adoption of the maxim "actor sequitur forum rei," since competence was given to a Mixed Commission, consisting of three commissioners, two of whom were chosen by the defendant's embassy and the third by the embassy of the plaintiff. It is probable that, while these two systems co-existed, the former was adopted in the provincial towns, while the Mixed Commissions acted in Constantinople. These Commissions ceased to act after 1864, as the result of a decision of the French Court of Aix, which decided that Frenchmen were free to deny their competence. The decision was given in a case where an Austrian had cited a Frenchman to appear before his consul in order to proceed to the appointment of a commission to decide a dispute which had arisen between them, but the Frenchman had refused to obey the citation. As a result of this decision the system ceased to be adopted, and the practice of suing the defendant before his consul became the general rule in civil and commercial cases between foreigners of different nationalities, as it had already become in criminal cases.[1]

The system of Mixed Commissions undoubtedly suffered from several grave disadvantages, the most obvious being its slow and complicated procedure. The plaintiff was obliged to cite the defendant to appear before his consul in order to arrange the constitution of the commission, the members of which had to be determined by the mutual consent of the consuls interested; and, if there were several defendants of different nationalities, there had to be as

[1] In Tripoli, as the result of a Protocol of 24th February 1873, the rule "actor sequitur forum rei" applies at least in criminal cases arising between foreigners of different nationalities.—Hertslet's Commercial Treaties, xiv. p. 540.

many commissions as there were defendants of different nationalities. All this must have added very largely to the expense. Another disadvantage was that, if the defendant desired to bring a counter claim, he had to do so by instituting a new action, entailing the appointment of a fresh commission, since the original plaintiff was now defendant and, therefore, entitled to nominate two of the three commissioners. Appeals were heard by the court competent to hear appeals from the appellant's consular court. But probably the greatest disadvantage of these commissions was in reference to the execution of their judgments; these judgments did not become executory until they had received the homologation of the defendant's consul, and it was the consul who was responsible for the execution of the judgment. There was, however, no law to compel the consul to grant homologation.

The system of making the defendant's consul competent was not without certain of the disadvantages just enumerated, and there is a special interest in comparing the two systems, since the rule adopted in Egypt was that the defendant's consul was always the judge. As a result of the application of the maxim "actor sequitur forum rei," if there were two defendants of different nationalities there had to be two distinct actions, each brought in a different consulate; if there was a counter claim there had to be a fresh action in the court of the original plaintiff; and an appeal had to be brought in the final consular appeal court of the appellant. In contrast with these defects, however, this second system had this great advantage, that the judgment was given by the consul, who would therefore be certain to enforce execution of it. The system must also have proved less costly, and certainly was more expeditious, which is a point of very considerable importance in commercial cases. The law applied under this system would be that of the consul, since this would be the only law which he had authority to apply, except that the plaintiff's personal law would apply in reference to all questions of his status or capacity, and the local law would apply in so far as the rule "locus regit actum" was recognised by the consul's law. In criminal cases the offender's law would determine whether the act complained of amounted to a punishable offence, and, if so, the extent of the penalty to which he was liable.

The later Capitulations gave competence to the Ottoman courts

in all criminal actions between foreigners and natives;[1] but if the accused was a foreigner his consular dragoman required to be present throughout the action, and to sign the judgment. In civil and commercial cases, between natives and foreigners, the Ottoman courts were also competent, at least when the value in dispute was less than 4000 aspers; but in cases of a greater value the Imperial Divan was alone competent. In both the presence of the consular dragoman was essential to the validity of the procedure, and written evidence was also necessary. During the Tanzimat, Mixed Commercial Courts were created in 1839 in Constantinople and the more important cities of the Empire. They did not commence to act, however, until 1846; their competence extended to all commercial actions between foreigners and Ottoman subjects. These courts, thus instituted, consisted of five judges, the president and two assessors being Ottoman subjects, while the other two assessors were foreigners, chosen for each particular case from a list of persons nominated for a year by the consul of the foreigner who was a party to the case.[2] They

[1] The French Capitulation of 1740, Article 65: "Si un Français ou un protégé de France commettait quelque meurtre ou quelque crime, et qu'on voulût que la justice en prit connaissance, les juges de mon empire et les officiers ne pourront y procéder qu'en présence de l'ambassadeur et de consuls ou de leurs substituts."

According to Tarring, "British Consular Jurisdiction in the East," London, 1887, p. 91: "In the Ottoman dominions criminal charges by a British subject against a Turkish subject, or by a Turkish subject against a British subject, are brought before the Turkish tribunals. But the presence of a dragoman from the British consulate is necessary to the validity of the proceedings; and (in Constantinople at least) if he refused to sign the sentence, it can only be carried into effect after negotiations between the higher authorities."

In Algiers the procedure, in criminal cases, used to be the same for foreigners as natives: "That in case any subject of His said Majesty being in any part of the Kingdom of Algiers, happen to strike, wound or kill a Turk or a Moor, if he be taken, he is to be punished in the same manner, and with no greater severity than a Turk ought to be, being guilty of the same offence; but if he escape, neither the said English Consul, nor any other of His said Majesty's subjects, shall be in any sort questioned and troubled therefor."—English Capitulation with Algiers, 10th April 1682, Article 62, Hertslet, vol. i. p. 62.

[2] There are certain instructive clauses in two treaties entered into between France and Tunis. These clauses refer to civil actions arising between Frenchmen and local subjects. The Treaty of 1802, Article 7, is in the following terms: "Les censaux Juifs et autres étrangers résidants à Tunis, au service des négociants et autre Français . . . s'ils ont quelque différend avec les Maures ou chrétiens du pays, ils se rendront avec leur partie adverse pardevant le commissaire de la République française, où ils choisiront à leur gré deux négociants français et deux négociants maures parmi les plus notables

heard all commercial cases between foreigners and Ottoman subjects, and all civil cases of a value greater than 1000 piastres, the provincial courts acting as first instance courts for their district, with an appeal to the court of Constantinople, which was also a first instance court for the metropolis. In civil cases of a value less than 1000 piastres, and in criminal cases, the ordinary Ottoman courts, as reformed by the Tanzimat, were competent. All questions of personal statute were, however, exclusively reserved for the personal court of the defendant, which applied its own personal law. The law applied in other cases between foreigners and Ottoman subjects was the Ottoman law as contained in the new codes. The former system of the personalty of the law had thus given way, to an important extent, to the new territorial system.

There is a clause in the most modern of the Capitulations which deserves special notice before we consider the position of Egypt in the nineteenth century. It contains a provision of some importance which, although it does not seem to have affected Turkish practice, is used as an argument to justify the legality of the system adopted in Egypt. The question refers to the case of a crime committed by a foreigner on an Ottoman subject. According to the Turkish practice, such cases were tried by the Ottoman courts, the consular dragoman of the accused being present during the proceedings and signing the sentence. There are, however, a certain number of Capitulations which contain clauses apparently suggesting a different procedure. The most important of these is the Capitulation of the United States of America of 1830, Article 4 of which is in the following terms: "Citizens of the United States of America, quietly pursuing their commerce, and not being charged or convicted of any crime or offence, shall not be molested; even when they have

pour décider de leur contestation."—Recueil de Traités par Martens et de Cussy, vol. ii. p. 207. As also the Treaty of 1824, Article 14: "En cas de contestation entre un Français et un sujet tunisien, pour affaire de commerce, il sera nommé par le consul général de France, des négociants français et un nombre égal de négociants du pays qui seront choisis par l'iman ou toute autre autorité désignée par S. Exc. le Dey. Si le demandeur est sujet tunisien, il aura le droit de demander au consul général d'être jugé de cette manière, et si la commission ne peut terminer la contestation pour cause de dissidence ou de partage dans les opinions, l'affaire sera portée pardevant S. Exc. le Dey, pour être prononcé par lui, d'accord avec le consul général de France, conformément à la justice."—Recueil de Traités par Martens et de Cussy, vol. iii. p. 614, Leipzig, 1846.

committed some offence they shall not be arrested and put in prison by the local authorities, *but they shall be tried by their minister or consul* and punished according to their offence; following, in this respect, the usage observed towards other Franks."[1] The argument based on these articles is that a foreigner, who is accused of a criminal act against an Ottoman, should not be subject to the Ottoman courts, but should be within the exclusive jurisdiction of his own consul, thus returning to the older practice of "actor sequitur forum rei." This argument is, however, rebutted by the last clause, "according to the practice established with regard to the Franks," that practice being to make the Ottoman courts competent.[2]

Summarising shortly the extent of the privilege of jurisdiction, as recognised in the Ottoman Empire in the nineteenth century, we may say that all disputes between foreigners of the same nationality were within the exclusive competence of the consul of the parties, whether the case was in reference to a civil, commercial, or criminal matter, and the law applied was that of the consul. Disputes between foreigners of different nationalities were decided by the consul of the defendant, who applied his own law. In actions between foreigners and native subjects the Ottoman courts were competent, if the case was either a civil suit of a value less than 1000 piastres or a criminal action; while the new commercial courts were competent in all other civil cases and in commercial cases of whatever value. The law applied by the Ottoman courts to foreigners was contained in the new codes. In all cases where a foreigner had to appear before an Ottoman court the presence of his consular dragoman was essential, and the judgment required his signature for its validity. The Turkish Land Law of 1867 further increased the jurisdiction of the Ottoman courts over foreigners, by giving them exclusive competence in all actions with reference to immovable property in which foreigners were interested, even when both parties were of the same nationality.

[1] Martens et de Cussy, vol. iv. p. 248. See also Art. 8 of the Belgian and Portuguese Capitulations, Noradounghian, vol. ii. pp. 245, 356. This question has been the subject of considerable discussion in reference to "L'Affaire Joris." Joris was a Belgian arrested by the Turkish authorities for an attempt on the life of the Sultan in July 1905. He was tried and condemned to death by the Ottoman courts. Both sides of the question are fully argued in a series of articles in Clunet, 1906, see pp. 65, 377, 383, and 759.

[2] See the French Capitulation of 1740, Article 65, quoted above.

In Egypt, under Mohammed Aly and his successors, the privileges of the Capitulations received a very considerable extension, and in no case was this so marked as in reference to the privileges of jurisdiction and legislation. There are two periods which require to be considered. The first includes the development by custom down to the year 1876, and the second the reforms which were then inaugurated. The principal point of distinction between the Egyptian and Ottoman practice was that in Egypt the original principle of the personalty of the law was retained to a much greater extent than was the case in Turkey, where the territorial principle, introduced by the Tanzimat, considerably modified the original privileges. The basis of the extension in Egypt was purely custom—custom universally followed and generally accepted. The situation in Egypt may be very briefly defined. All cases between foreigners of the same nationality were, as in other parts of the Ottoman Empire, tried exclusively by their consul; in all other cases, even in actions between natives and foreigners, the maxim "actor sequitur forum rei" was applied. In Turkey there had been a choice between two systems for the trial of actions between foreigners of different nationality; the case was tried either by a Mixed Commission or by the defendant's consul. Of these the first was a dilatory and expensive procedure, apart from the other very serious disadvantages it possessed. Thus, when we consider the increased difficulties which would be experienced by persons resident in Egypt having to consult the embassies at Constantinople, it is not surprising to find that the second procedure was universally accepted. In criminal actions between foreigners of different nationalities the defendant's consul was always considered competent in Turkey, and this practice was also followed in Egypt. In cases between foreigners and natives of a value greater than 4000 aspers the Imperial Divan was declared competent by the Capitulations; but the same difficulty caused by the distance between Egypt and Turkey, and the delay and expense which would result from following this rule, led to its abandonment in Egypt. The procedure adopted in Egypt was the result of the two rules that the consular dragoman required to be present during the hearing of the case,[1] and that the judgment could only be executed

[1] M. Manoury, who was entrusted with the preparation of the codes for the Egyptian Mixed Courts, describes how this necessity for the presence of the consular dragoman led to the adoption of the rule "actor sequitur

by the consul. A native wishing to sue a foreigner was obliged first to apply to his opponent's consul to receive permission for the dragoman to attend; but this permission would not be given unless the consul was convinced that there was *primâ facie* evidence of a case against his fellow-countryman, and sometimes this evidence would be so clear that the consul would himself, and without further procedure, order the offender to fulfil his obligations, or punish him forthwith if the complaint was criminal. Even if the dragoman had been permitted to attend the case, and the native plaintiff had been successful, he was unable to obtain execution of the judgment without having recourse to the defendant's consul, who might not give his consent until it was clearly shown that the decision had been properly given, which might entail the rehearing of the case by the consul. It is not surprising that, as a result of this dual interference on the part of the foreign consul, native plaintiffs found it more convenient to ignore their own courts altogether and proceed directly before the defendant's consul.[1] The adoption of this system, whereby a native sued a foreigner before the defendant's consul, whether the case was civil, commercial, or criminal, was no doubt influenced by the fact, which was very clearly brought out by the International Commissions appointed between 1867 and 1876, that the Egyptian native courts were not in a position to invite the confidence of either natives or foreigners.[2]

forum rei," even in cases between natives and foreigners. "Nous avons vu que le tribunal local ne pouvait condamner l'étranger défendeur hors de la présence du drogman. Or, malgré l'obligation imposée aux étrangers de faire présenter ce drogman, les mauvais débiteurs refusèrent de le faire. L'indigène demandeur s'adressait alors au consul, uniquement pour demander que cette formalité fût remplie et lui exposait son affaire. Le consul, bien souvent convaincu de la mauvaise foi de son administré, l'obligeait à payer et pour cela rendait un jugement. Puis ce qui d'abord, était fait dans l'intérêt de l'indigène, le consul l'invoqua comme un précédent, et voulut juger dans tous les cas, et, dès qu'un seul consul se mit à juger, tous en firent autant. De même, en refusant de commettre des délégués consulaires pour assister les officiers locaux dans l'exécution des jugements, on obligea les indigènes à demander l'exécution au consul."—"La Réforme Judiciaire en Egypt," quoted by M. Arminjon in "Le Code Civil et l'Egypte," Paris, 1904, p. 9.

[1] "En matière civile l'adaptation se fit plus lentement, et certains consulats, le consulat d'Angleterre notamment, restèrent assez longtemps fidèles aux vieux errements, c'est-à-dire à la solution diplomatique des conflits indigènes et étrangers."—Du Rausas, vol. ii. p. 247.

[2] The Reports are quoted in full in Borelli's "La Législation Egyptienne Annotée," Paris, 1892. Quotations are made from these Reports below in regard to this point.

The privilege of jurisdiction in Egypt before the reforms of 1876 may be thus summarised:—All actions, of whatever nature, between foreigners of the same nationality were tried exclusively by their own consul; all actions between foreigners of different nationalities were tried by the defendant's consul; a civil or commercial action brought by an Egyptian subject against a foreigner was tried by the foreigner's consul; a civil or commercial action brought by a foreigner against a native was tried by the local court; while in criminal cases, if a foreigner was the offender, the case was decided by his consul, but if a native was the offender, the local courts were competent. The Mixed Commercial Courts at Cairo and Alexandria, which had been instituted as a result of the Turkish reforms of 1839, were reformed by a law of 3rd September 1861. These courts modified this system in so far as commercial suits between natives and foreigners were included in their competence. The Turkish Law of 1867, granting foreigners the right to own immovable estate, did not affect the system adopted in Egypt, which treated actions in reference to immovables on the same footing as other actions. Foreigners had been allowed to own immovables in Egypt under Mohammed Aly, and disputes in regard to such property, which had at first been decided diplomatically, were decided at the time the Turkish Law was promulgated by the defendant's court, even in the case of a foreign defendant.[1] This practice continued after 1867.

The expansion of the privilege of legislation in Egypt was even greater than described in reference to jurisdiction, and it amounted to a guarantee of complete immunity for the foreigner from the application of Egyptian law. In Turkey the new laws of the Tanzimat applied to foreigners in their relations with natives, as did also the Press laws and the Police Regulations; but in Egypt the foreigners' immunity from local law was complete. This extension was entirely opposed to the terms of the Capitulations,

[1] "Les explications échangées dans la commission ont mis en lumière l'incertitude qui règne nécessairement dans toutes les questions qui concernent la propriété foncière et les droits réels: ainsi, une grande partie des consuls délegués ont reconnu que les tribunaux locaux sont seuls compétents en matière immobilière: les autres ont déclaré que, dans la pratique, et conformément à la jurisprudence de leurs cours d'appel, les tribunaux consulaires exercent un droit de juridiction en ces matières." —Report of the International Commission of 1869 to 1870, Borelli, p. lxxi.

which only recognised the application of the foreign law to cases in which both parties were foreigners of the same nationality, and in questions of personal statute. This had been extended in Turkish practice by the recognition of the maxim "actor sequitur forum rei" in actions between foreigners of different nationality, since it was evident that the consul could, and would, only apply his own law. When this maxim was adopted in Egypt, and made to apply to cases between natives and foreigners, a further extension was inevitable. The consuls were foreign judges, appointed by a foreign State, with power only to apply their national law, and if they ever applied the local law it could only be in so far as their national law accepted the doctrine "locus regit actum." As foreigners resident in Egypt could only be judged by their consuls, they could only be judged in accordance with their national law, and Egyptian law did not apply to them. But even if a foreigner could not be obliged by Egyptian law, he could benefit by it, since an action brought by a foreigner against a native was tried by the local courts, who applied Egyptian law. This immunity extended in Egypt even to police laws, although the Police Regulations of Saïd Pasha, of the years 1855, attempted to modify the effects of the immunity by a partial recognition of the international doctrine that all persons resident within the territories of a State are bound by its police laws. The concurrent application of these two conflicting principles rendered the Regulations entirely impracticable. In the first place, the Regulations treat the consuls as if they were officials of the Egyptian Government; and, in the second place, although the criminal jurisdiction over its nationals, claimed by the consular court, is fully admitted, an attempt is made to bind the consuls to follow the terms of the Regulations in these cases, and not their own national law. Thus, foreigners coming from abroad were to be provided with passports delivered "soit par son consulat, soit par l'autorité locale." No foreigner should be allowed to open an hotel, café, restaurant, or similar establishment without first receiving authorisation "de son consulat;" and if the foreigner, opening such establishment, infringed the regulations, he was to be reported by the director of police to his consul, who would enforce the prescribed penalties, the Egyptian Government reserving to itself the right to close the establishment in the interest of public order. Police contraventions were to be tried by the consul, the Egyptian director

of police prosecuting. In delicts, if the foreigner was caught in the act, he might be arrested by the Egyptian police, but notice of the arrest must immediately be sent to the consul, the case being tried by the consul. And in criminal cases the consuls were again given competence: "le jugement et la punition des crimes et délits imputés à un étranger, dont la prevention aura été justifiée par l'instruction préparatoire, seront, à la requête du directeur de la police poursuivis devant la justice consulaire."

Such was the position in Egypt when, in 1867, Nubar Pasha addressed his famous report to the Khedive Ismaïl. This report commenced with a very strong indictment against the system of justice which had developed in Egypt, a system which "n'a plus pour base les Capitulations. De ces Capitulations il n'existe plus que le nom; elles ont été remplacées par une législation coutumière, arbitraire, résultat du caractère de chaque chef d'Agence, législation basée sur des antécédents plus ou moins abusifs, que la force des choses, la pression d'un côté, le désir de faciliter l'établissement des étrangers de l'autre, ont introduite en Egypte." "This state of affairs, contrary alike to the spirit and the letter of the Capitulations," interferes with the development of the country, and is ruining it morally and materially. To remedy this a complete reform is necessary. Justice should become territorial, and its administration be made independent alike of the Egyptian Government and of the consuls; every guarantee should be secured to the foreigners; and a foreign element should be introduced into the Egyptian courts, as had already proved successful in other administrations. "Il faut que, pour l'administration de la justice, l'Egypte fasse ce qu'elle a déjà fait d'une manière si efficace pour son armée, ses chemins de fer, ses ingénieurs des pont et chausées, ses services de santé et d'hygiène. L'élément compétent, l'élément étranger a été introduit; cet élément a servi de former l'élément indigène. Ce qui a été fait dans l'ordre matériel doit être fait dans l'ordre moral, c'est-à-dire l'organisation de la justice." To carry out this scheme, commercial courts should be instituted with a Bench of six judges, the president and two members being Egyptian, the vice-president an experienced lawyer brought from Europe, and the two remaining members foreign lawyers chosen by the consuls. The appeal court should have a Bench of seven judges, the president and three members being Egyptians who have studied law on the continent, and the other

three members being competent judges expressly appointed from Europe. In the same manner civil courts should be instituted on a similar footing with competence to try all civil cases, except those having reference to immovable estate, which should be reserved for the exclusive competence of the ordinary Egyptian native courts. Cases of crime or delict committed by foreigners should be tried by European judges, acting with a jury, which should be partly foreign and partly native. New codes should also be prepared based on a combination of the French codes, Egyptian law, and "les lois des autres nations européennes," a committee of foreign and Egyptian jurists being appointed to prepare them.

This report was communicated to the representatives of the different Powers having interests in Egypt, but the negotiations which ensued were so protracted that it was not till 1st February 1876 that the new Mixed Courts sat for the first time; nor was the reform, when at length introduced, the same as that suggested by Nubar, since his scheme had suffered considerable amendment during the nine years of negotiations. These reforms, if suggested at the present time, would probably receive the approval of a large proportion of the European population resident in Egypt; but at the time they were first put forward, the members of the foreign colony were not prepared for so large a modification of the existing system; nor did the character of Ismaïl's government offer sufficient guarantee to the Powers that their subjects would benefit by the change. A quotation from the report[1] of a special Commission, appointed by the French Government to consider the new scheme, shortly summarises the position taken up by the Powers and the feelings of the European population. "Les gouvernements se sont montrés disposés à examiner diplomatiquement les moyens de modifier la condition des étrangers en Turquie; mais le cabinet de Londres, qui paraîtrait vouloir faire les plus larges concessions, ne consent, en réalité, à entrer dans cette voie que lorsqu'il aura l'assurance de garanties, sérieuses et efficaces.[2] La plupart des personnes qui connaissent l'Orient et l'Egypte, qui ont habité ces pays dans des conditions

[1] Report of the French Commission of 1867.—Borelli, pp. xxviii. to lxiii.

[2] Lord Stanley, writing to the British agent in Egypt, said that the Powers should wait to see whether the new system would guarantee security to foreigners, and that foreign litigants before the new courts would not suffer from the venality, ignorance, or fanaticism of the judges.

diverses et vu fonetionner les institutions qui les régissent, opposent un veto absolu à toute modification aux eapitulations et usages; les plus eoneiliants témoignent une grande défiance et eonseillent une extrême réserve. A la nouvelle des projets de réforme, une émotion très vive s'est répandue en Egypte dans toute la eolonie européenne, et, pour employer le langage même des dépêehes, il y a eu une véritable panique parmi les Européens, et l'inquiétude est allée jusqu' à l'effroi." Under sueh eireumstanees we cannot regret the delay eaused by the negotiations, sinee it offered an opportunity not only for the Powers interested to thoroughly investigate the proposed reforms, and to modify them if neeessary, but also for the preparation of the Egyptian people for the ehange. The failure of the first reforms of the Tanzimat were greatly due to the suddenness of the ehange and the unpreparedness of the people. A similar result was to be feared in Egypt if time were not allowed for diseussion, preparation, and, if neeessary, amendment.

The result of the investigations of the Freneh Commission, mentioned in the last paragraph, was to show that Nubar's denuneiation of the existing system, although exaggerated, was founded on faet. Grave abuses eertainly existed; but the extension of the eonsular jurisdietion was in large part due to the eomplete ineompetenee of the Egyptian eourts. Nor were the eourts alone at fault; the Egyptian Administration itself offered no guarantee that justice eould be obtained otherwise than from the consuls. "Les Européens n'auraient jamais eonsenti à eomparaître eomme défendeurs devant la justiee ordinaire du pays. . . . La répugnanee des Européens à aller devant les tribunaux loeaux est telle que les viee-rois l'ont eux-mêmes respeetée. Pour le jugement des proeès qu'ils ont eus avee les étrangers, ils ont eonsenti a eréer des eommissions spéeiales en vue desquelles il a été arrêté des règlements partieuliers de proeédure et même quelquefois à porter leurs différends devant les tribunaux européens."[1]

[1] Borelli, p. xxxvii. A number of cases in which special commissions were formed are mentioned in the note.

The report of the International Commission of 1869-1870 bears evidence to the same effect: "En fait, les étrangers qui ont des contestations avec le gouvernement, les administrations, les Daïras (administration de la fortune personelle) du Khédive et des princes, ou quelques hauts personnages, refusent de saisir les tribunaux locaux, auxquels ils n'accordent pas de confiance; les réclamations dans ces différents cas se produisent par voie diplomatique, et sont présentées par le consul qui affirme le droit de son administré, au gouvernement qui conteste ce droit."—Borelli, p. lxxi.

The Mixed Commercial Courts, even in their reformed state, received considerable criticism: "Le fonctionnement de ces tribunaux a soulevé bien des plaintes: l'élément indigène, qui y domine, les placerait sous l'influence d'idées, systématiquement hostiles aux étrangers. La plupart des juges n'auraient pas les connaissances spéciales nécessaires,[1] manquerait d'indépendence et se laisseraient souvent guider par des mobiles regrettables. Les règles de procédure ne seraient pas suivies, et les lois que le tribunal a pour mission de faire respecter seraient trop souvent ignorées ou volontairement violées." "La réponse aux reproches formulés dans la Note nous a été présentée par les diverses personnes entendues dans l'enquête qui assurent qu'on exagère et qu'on généralise trop mal, et surtout qu'on n'en indique pas la véritable cause. Ce mal tiendrait beaucoup plus aux vices de l'organisation administrative de l'Egypte qu' à l'immixtion des consuls dans les affaires de leur nationaux." "Est-il possible d'établir dans un pays une bonne organisation judiciaire sans une bonne organisation administrative, sans de sages institutions politiques, sans établir l'ordre dans les divers services publics?"

The inconveniences caused to foreign litigants were those with which we are already familiar; they were disadvantages which must naturally flow from a too faithful adoption of the maxim "actor sequitur forum rei." Appearance of the defendant and execution of the judgment were undoubtedly secured by making the defendant's consul competent; but, if there were several defendants of different nationalities, there required to be as many actions before as many different consuls as there were defendants of different nationalities.[2] A counter-claim entailed a second action before the

[1] Gatteschi, in his pamphlet on Immovable Property in Egypt, refers to the incompetence of these old Mixed Courts at Alexandria, and says that "an arsenal guard was appointed as president, then an inspector of railways, and lastly an admiral."

[2] "Or, précisement, tous ces cas se présentent nécessairement dans les affaires les plus fréquentes, c'est-à-dire en matière de lettre de change, de société, de faillite, de distribution de deniers saisis, de règlements de droits de gage sur les immeubles, car dans ces sortes d'affaires, il-y-a toujours beaucoup de parties en cause, de toutes nationalités."

"Un très grave inconvenient résulte également de ce que l'appel des sentences consulaires n'est pas jugé en Egypte. Le demandeur qui a gagné son procès en première instance est obligé, sur l'appel de son adversaire, d'aller plaider à l'étranger, dans un pays où il ne connait personne, où il lui est difficile de se défendre, ce qui revient souvent, en fait, à un véritable déni de justice." —Report of International Commission of 1869 to 1870, Borelli, p. lxx.

The position of Frenchmen was

consul of the original plaintiff. An appeal had to be brought in the final Consular Appeal Court of the appellant, which in many cases was at some distance from Egypt. Parties to a contract could never be certain what law would eventually determine their obligations, since they could not know in advance whether a dispute might not arise upon its interpretation, or what consul would be competent to try that dispute. Finally, the consular courts were not all above suspicion: "Certains tribunaux consulaires étrangers, d'ailleurs semblent donner lieu à quelques critiques au point de vue de l'administration de la justice." Thus, although the Commission was not prepared to accept Nubar Pasha's reforms in their entirety, it advocated a certain amount of reform. The exclusive competence of the consuls in cases in which their fellow-countrymen were alone interested should be retained. The existing practice in reference to cases between foreigners of different nationalities should also be continued, with the reserve that, when foreigners of different nationalities entered into a contract, they should be obliged to include a clause stating the law by which it should ultimately be interpreted. Civil and commercial cases between foreigners and natives should be tried by a new Egyptian court, completely reorganised and having a Bench of which the majority should be European judges, the consular dragoman of the foreign litigant being present in all cases; but the jurisdiction in criminal and delictual cases should remain as before, police contraventions, however, being tried by the local courts. This new system should, in any case, only be accepted subject to its proving successful; and the Powers should reserve to themselves the right to return to the former system if the reform did not prove successful.

The new scheme suggested by the French Commission was thus in many points radically different to the original proposals. Nubar then proposed that an International Commission be summoned. This was agreed to, subject to the reserve that the Commission

rendered more difficult by the terms of Article 2 of the Edict of 1778, which makes "très expresses inhibitions et défense à tout français en pays étranger d'y traduire, pour quelque cause que ce puisse être, un autre Français devant les juges ou autres officiers des puissances étrangères à peine de 1500 livres d'amende."—French Commission's Report, Borelli, p. xxx.

See Memorandum of English Consul in Sir H. Drummond Wolff's Report, Egypt, No. 5, 1887, p. 12, as to situation of different courts of the Powers represented in Egypt.

should be simply consultative. This Commission met at Cairo, and sat nine times between 28th October 1869 and 5th January 1870.[1] The new scheme submitted by Nubar was considerably modified as compared with the original one. A new Mixed Court was to be created, having three first instance courts and a Court of Appeal, in all of which the majority of the judges should be foreigners, the president, however, being an Egyptian. The competence of the new courts should extend to all civil and commercial actions arising between natives and foreigners, or foreigners of different nationalities, with the exception of questions of personal statute. All actions in which the Egyptian Government, or the different administrations, or the daïras of the princes, were parties, even if the other party was a native, were also to be within their jurisdiction. In criminal cases the new courts, assisted by a jury, which should be made up partly of foreigners and partly of natives, should try all criminal actions even when both parties were natives. In civil cases between two natives these new courts should only be competent if both parties agreed to accept their jurisdiction; but in commercial and criminal cases between natives they should be exclusively competent. Other matters in reference to the position of the judges and the creation of a parquet were dealt with. Unfortunately for the success of this new scheme, which had much to recommend it, the French commissioners were bound by the report of the French Commission. As a result the final decision of the International Commission was in many points the same as the French. It agreed, however, to the competence of the new courts in civil and commercial cases between foreigners of different nationalities. It also considered that the judgments of these courts should be executed by the local courts without the intervention of the consuls; and in penal cases it agreed that their competence should extend to crimes and delicts as well as to police offences committed by foreigners; but this penal jurisdiction should not have force until the Powers had been given the opportunity of examining the guarantees "résultant d'une législation complète, comprenant le Code pénal et le Code d'instruction criminelle."

As a result of an understanding based on the findings of a second French Commission, the French Government practically agreed to the report of the International Commission; but at this stage the

[1] See Borelli, pp. lxviii. to lxxxvi. for the Report of this Commission.

negotiations were interrupted by the Franco-Prussian war. Before negotiations could be reopened the fears of Turkey, that its rights of sovereignty over Egypt might be injuriously affected by the proposed reforms, had to be dispelled. This latter task was eventually accomplished by a personal visit of Nubar to Constantinople, the result of which was the grant of a new Firman, including the following clause, which successfully met the difficulty:—"Il est aussi autorisé à renouveler et à contracter, sans porter atteinte aux traités politiques de ma Sublime-Porte, des conventions avec les agents des puissances étrangères, pour les douanes et le commerce, *et pour toutes les relations qui concernent les étrangers, et toutes les affaires intérieures et autres du pays, et cela dans le but de développer le commerce et l'industrie, et de régler la police des étrangers, ainsi que leur situation, et tous leurs rapports avec le Gouvernement et la population.*"[1]

This difficulty having been successfully removed, Nubar reopened negotiations with the cabinets of Europe; but instead of commencing where they had been left off, he again put forward the claim for the criminal jurisdiction of the Mixed Courts. A Commission of the Powers,[2] however, rejected this claim, and the penal competence of the new courts was limited to the consideration of certain crimes and delicts connected with the judges and officials of the Mixed Courts; the Commission also decided the procedure and the penalties for these offences. On 24th February 1873 the final draft of the "Projet de Règlement d'organisation judiciaire pour les procès mixtes en Egypte,"[3] together with the texts of the new codes—Civil, Commercial, Maritime, Civil and Commercial Procedure, Criminal and Criminal Procedure — were submitted to the Powers. Austria, Germany, England, Italy, and the United States of America accepted these at once, but the French Government continued negotiations till November 1874, and even then made its consent subject to a number of reserves. Ratification by the French Parliament was still necessary, and before this was obtained Ismaïl inaugurated the new courts on 28th June 1875. The Mixed Courts did not commence to act until 1st February 1876, by which time the French Parliament had accepted the new system of jurisdiction

[1] Ministry of Justice, Recueil, Firman of 1873, p. 234.

[2] See Borelli, pp. lxxxvii. to cvi.

[3] Hertslet, Commercial Treaties, vol. xiv. pp. 303, etc.

subject to a number of reserves, which were subsequently stipulated for by the other Powers.[1] The more important of these were—That accusations of fraudulent bankruptcy should be tried by the consul of the offender; that, so far as possible, when a foreigner was being tried one of the judges should be of his nationality; that the new laws and organisation should not be retroactive; that claims against the Egyptian Government, pending at the time, should be submitted to a special commission of three judges of the Court of Appeal; while, finally, special privileges were reserved for the members of the Consular Service and certain foreign religious establishments. The new system was accepted for a period of five years, and its continuation was made conditional on its success. If at any time the Powers desired to revert to the former system they might do so; and the former privileges remained in full force except in so far as they had been expressly abrogated. "Les capitulations, telles qu'elles ont été appliquées jusqu'ici en Egypte, demeurent la loi absolue des rapports entre le gouvernement égyptien et les étrangers, à l'exception des dérogations partielles et explicites formellement consenties à titre d'essai par le gouvernement français et qui portent principalement sur les usages particuliers à l'Egypte. Au cas où, conformément aux prévisions du deuxième paragraphe de l'article 10 du règlement organique, les puissances jugeraient qu'il y a lieu de retirer leur approbation au nouvel ordre de choses, il demeure entendu, en ce qui nous touche, que le régime actuel n'étant que temporairement suspendu, reprendrait son caractère obligatoire et que la juridiction des consuls, telle qu'elle s'exerce aujourd'hui, revivrait dans sa plénitude, sauf conventions contraires

[1] Convention between French and Egyptian Governments of 19th September 1874, with annexes of 25th September 1874 and 25th January 1876.—Borelli, pp. cix. to cxiii.

Italian Convention, 23rd January 1875, and annexes, February and March 1873, May 1875, and January 1876. —Borelli, pp. cxiv. to cxvii.

German Convention of 5th May 1875, and annexes of January 1876. —Borelli, pp. cxvii. to cxx.

Austrian Convention of 28th May 1875, annex of January 1876.—Borelli, pp. cxx. to cxxiii.

English Convention of 31st July 1875, and annex of 10th February 1876. —Borelli, pp. cxxiii. to cxxv.

Russian Convention of 27th September 1875, and annex of January 1876. —Borelli, pp. cxxvii. to cxxx.

Belgian Convention of 1st February 1876.—Borelli, p. cxxx.

Greek Convention of 8th February 1876.—Borelli, p. cxxxi.

Spanish Convention of 27th February 1876.—Borelli, p. cxxxii.

Convention of the United States of America of 16th March 1876.—Borelli, p. cxxxiv.

à débattre ultérieurement. Soit que le gouvernement ne remplisse pas les conditions stipulées, soit que le résultat de l'expérience ne soit pas satisfaisant, ou que la protection que les consuls ont le droit et le devoir d'exercer dans l'intérêt de la sécurité de leurs nationaux devienne inefficace et impuissante, le gouvernement français se réserve, ainsi que l'a fait la cour de Russie, d'aviser immédiatement ou même de revenir au régime actuel, sans attendre la période quinquennale d'essai."[1]

[1] Letter of French Minister of Foreign Affairs to French Consul-General in Egypt, 15th October 1875.—Borelli, p. cxiii.

CHAPTER XV

THE PRIVILEGE OF JURISDICTION SINCE THE REFORM OF 1876

THE Privilege of Jurisdiction was very considerably modified by the institution of the Egyptian Mixed Tribunals in 1876. The principal result of the reform was to reduce the competence of the Consular Courts; but, although greatly redueed, the jurisdiction of the consuls was not abolished. They still retained their competence in questions of personal statute, in actions where both parties were their nationals, and in cases of crime and delict where the accused was their fellow-subject. There were in Egypt, after 1876, two distinct classes of courts, and each of these classes could be sub-divided into three distinct systems of courts; the primary division was into Courts of Personal Statute and Courts of Real Statute. In the first class were included the Consular Courts, the Moslem Courts, and the Courts of the non-Moslem Religious Communities; in the second class were the Mixed Courts, the Native Courts, and the Consular Courts. This chapter will be confined to the consideration of the Mixed and Native Courts; the Moslem and non-Moslem Religious Courts will be considered in a subsequent chapter; while the Consular Courts will only be discussed incidentally, since their regulation and organisation depends upon the Law of the State, which the consul himself represents.[1] They are in consequence not Egyptian Courts.

[1] The British Consular Courts in Egypt are at present regulated by the Ottoman Order in Council of 8th August 1899. The following summary given by Mr. Tarring is still substantially correct. "For the Ottoman Dominions a Court is constituted to sit at Constantinople, styled His Britannic Majesty's Supreme Consular Court for the dominions of the Sublime Ottoman Porte; presided over by a Judge and an Assistant Judge, with the necessary staff of officers and clerks. The Assistant Judge also acts as Registrar. . . . A Court styled His Britannic Majesty's Court for Egypt is to sit ordinarily at Alexandria or Cairo, with a Law Secretary (who is to hold a commission as Vice-Consul, and act as Registrar), and the necessary staff of officers and clerks. . . . His Majesty's Consul-General at Constantinople is to

The Mixed Courts were inaugurated on 28th June 1875, and commenced to sit on 1st February 1876. The Powers had consented to their institution for a period of five years. The privileges of the Capitulations, however, which had not been expressly abrogated, were maintained, and the right to revert to the system in existence before the Reform was reserved in the event of the new scheme not proving a success. The continuance of the system of Mixed Courts has, however, been repeatedly consented to by international agreements, the period of continuation being sometimes for five years, but at others for only one year. Thus the Powers agreed for the renewal of the Mixed Courts for a period of five years in 1884, 1889, 1894, and 1900, and for one year in 1881, 1882, 1883, and 1899; the last international agreement on the subject was in 1905, when it was agreed that the Mixed Courts should be maintained till 31st January 1910. Certain modifications were agreed to in the constitution of the courts in these different conventions. In the account given of the Mixed Courts these modifications are given effect to, and the description is, therefore, of the Mixed Courts as defined in the Règlement d'organisation judiciaire modified by subsequent international agreements.

The Mixed Courts consist of three First Instance Courts, which sit at Alexandria, Cairo, and Mansourah,[1] with a Court of Appeal sitting at Alexandria. The Court of First Instance at Alexandria has a Bench of eighteen judges, twelve of whom are foreigners and six natives; the court of Cairo has thirteen foreign and six native judges; the Mansourah court has six foreign and three native judges; while the Court of Appeal has a Bench of fifteen judges, ten of whom are foreign and five native. All these judges are appointed by the Egyptian Government, with the approval of their own Govern-

be the Judge of the Supreme Court. . . . The Assistant Judge of the Supreme Court is to hold a commission as Vice-Consul from His Majesty. . . . His Majesty's Consul at Alexandria is to be the Judge of the Court of Egypt. . . . Every Consular officer, commissioned and uncommissioned, with such exceptions as the Secretary of State or the Supreme Court thinks fit, holds and forms a Provincial Court for and in his Consular district." A right of appeal exists, under certain conditions, from the Court of Egypt or any Provincial Court to the Supreme Court, and from the Supreme Court, under certain conditions, to His Majesty in Council.—Tarring, pp. 47 to 53.

[1] The Court of Mansourah originally sat at Zagazig, but was transferred to Ismailia, and then to Mansourah, to be suppressed in 1881 and later reinstituted at Mansourah by a Decree of 9th June 1887.

ment in the case of foreign judges.[1] In regard to the judges of First Instance, all the Powers are on an equal footing, so that each is entitled to two judges; but the great Powers have stipulated that their representatives shall not be sent to Mansourah. The judges of the Court of Appeal are appointed in the same manner, but Austria, France, Germany, Great Britain, Italy, Russia, and the United States of America have stipulated that they shall each have a judge of the Court of Appeal. In regard to any judgeships in the Court of Appeal beyond this number, the Egyptian Government have an entirely free hand, and at present the additional judgeships are held by judges from Greece, Belgium, and Portugal. At the head of the Cairo First Instance Court, and of the Court of Appeal, there is a native president appointed by the Egyptian Government; but the powers of these presidents are purely honorary. The duties of president, in each of these courts, are performed by a vice-president or deputy vice-president, who are appointed by the vote of their respective courts to hold office for one year. There are two chambers in the Court of Appeal, and they are presided over respectively by the vice-president or the deputy vice-president, or, in their absence, by the senior member present. To insure the absolute independence of the Judges of the Mixed Courts, they are all, whether natives or foreigners, declared to be irremovable;[2] and to prevent any indirect influence of the Government they are absolutely prohibited from accepting any "distinctions honorifiques ou matérielles" from the Egyptian Government.[3] The official languages authorised to be

[1] Règlement d'organisation judiciaire, Article 5. "La nomination et le choix des juges appartiendront au gouvernement égyptien; mais pour être rassuré lui-même sur les garanties que présenteront les personnes dont il fera choix, il s'adressera officieusement aux ministres de la justice à l'étranger, et n'engagera que les personnes munies de l'acquiescement et de l'autorisation de leur gouvernement."

[2] Règlement d'organisation judiciaire, Article 19. "Les juges qui composent la cour d'appel et les tribunaux seront inamovibles.

"L'inamovibilité ne subsistera que pendant la période quinquennale. Elle ne sera définitivement admise qu'après ce délai d'épreuve."

[3] Règlement d'organisation judiciaire, Articles 21 to 24:—

Article 21. "Les fonctions de magistrat, de greffier, commis-greffier, interprète et huissier seront incompatibles avec toutes autres fonctions salariées et avec la profession de négociant."

Article 22. "Les juges ne seront point l'objet, de la part de l'administration égyptienne, de distinctions honorifiques ou matérielles."

Article 23. "Tous les juges de la même catégorie recevront les mêmes appointements. L'acceptation d'une rémunération, en dehors de ses ap-

used in the courts are Arabic, Italian, French, and English.[1] The Règlement d'organisation judiciaire also provides for a Parquet with a foreign Procureur-Général, registrars,[2] interpreters, and the necessary staff of clerks and officers. Provision is also made for the institution and organisation of a Bar.

The territorial jurisdiction of each of the First Instance Courts is as follows:—(1) The Court of *Alexandria* has jurisdiction in the Moudiriahs of Beheira (including Rosetta) and Gharbiah (with the exception of certain villages and the districts of Talkha, Sherbin, and Samanud), and in certain villages of Menoufia; (2) the Court of *Cairo* has jurisdiction in the Moudiriahs of Ghalioubiah, Menoufiah (with the exception of certain villages), and Upper Egypt to the frontiers of the Sudan, together with certain villages in Gharbiah; (3) the Court of *Mansourah* has jurisdiction in the Moudiriahs of Dakhaliah and Sharkiah, as well as in the districts of Talkha, Sherbin, and Samanud in the Moudiriah of Gharbiah, and in the districts of Port Said, Ismaîlia, Suez, El Arish, and the Sinai Peninsula. Each of these Courts, within its territorial circumscription, has a civil and commercial jurisdiction, as well as a certain limited competence in

pointements, d'une augmentation des appointements, de cadeaux de valeur ou d'autres avantages matériels, entraîne, pour le juge, la déchéance de l'emploi et du traitement, sans aucun droit à une indemnité."

Article 24. "La discipline des juges, des officiers de justice et des avocats, est réservée à la cour d'appel. La peine disciplinaire applicable aux juges, pour les faits qui compromettent leur honorabilité comme magistrats ou l'indépendance de leurs votes, sera la révocation et la perte du traitement sans aucun droit à une indemnité. La peine applicable aux avocats, pour les faits qui compromettent leur honorabilité, sera la radiation de la liste des avocats admis à plaider devant la cour. Le jugement devra être rendu par la cour, en réunion générale, à la majorité des trois quarts de conseillers présents."

[1] Circular of 15th January 1905.

[2] Règlement d'organisation judiciaire, Articles 6, 7, and 8:—

Article 6. "Il y aura, près la cour d'appel et près chaque tribunal, un greffier et plusieurs commis-greffiers assermentés, par lesquels il pourra se faire remplacer."

Article 7. "Il aura aussi près la cour d'appel et près chaque tribunal des interprètes assermentés, en nombre suffisant, et le personnel d'huissiers nécessaire qui seront chargés du service de l'audience, de la signification des actes et de l'exécution des sentences."

Article 8. "Les greffiers, huissiers et interprètes seront d'abord nommés par le gouvernement; et quant aux greffiers, ils seront choisis la première fois à l'étranger, parmi les officiers ministériels qui exercent ou qui ont déjà exercé, ou parmi les personnes aptes à remplir les mêmes fonctions à l'étranger. Les greffiers huissiers et interprètes pourront être révoqués par le tribunal auquel ils seront attachés."

penal matters. Each First Instance Court has a "Tribunal des Référés," and a Summary Court for both civil and commercial cases, as well as an ordinary Civil Court and an ordinary Commercial Court. They have also a Court to try police contraventions, a Court to try cases of delict, and a Council for the "instruction" of cases of crime or delict. The Court of Appeal hears appeals in civil and commercial cases, acts as an Assize Court for the trial of crimes, and as a Court of Cassation in penal cases.

The "Tribunal des Référés" consists of a single judge, who must be a foreigner, and who is appointed for one year from among the judges of the First Instance Court of the district. The duties of this Court are described in article 34 of the Procedure Code:[1] "Le tribunal des référés . . . statuera contradictoirement, tant en matière civile que commerciale, sur les mesures urgentes à prendre, sans préjudice du fond, et sur l'éxécution des jugements, sans préjudice des questions d'interprétation." The Summary Court consists of one judge, who must also be a foreigner, and who is appointed in the same manner as the judge of the "Tribunal des Référés." His duties are defined in Article 14 of the Règlement d'organisation judiciaire: "Les tribunaux délégueront un juge qui, agissant en qualité de juge de paix, sera chargé de concilier les parties et de juger les affaires dont l'importance sera fixée par le Code de procédure."[2] The first duty of a Summary Court judge is to prevent litigation as far as possible by trying to conciliate the parties; in cases within the competence of his Court, this duty is always imposed upon him, but in other cases only at the request of one of the parties.[3] The competence of the Court extends to all civil and commercial cases of a value which does not exceed 1000 piastres without appeal, and of the value of 10,000 piastres with appeal, also in last resort up to a value of 1000 piastres, and with appeal up to any value in reference to the following matters:—(*a*) Actions for payment of rent of houses or farms, the validity of the seizure of

[1] The procedure is described in Articles 136 to 146 of the Procedure Code. Article 136 is in the following terms: "Le président du tribunal de référé tiendra, à des jours et heures fixes, qui seront déterminés par le règlement, des audiences dans lesquelles il lui sera référé les contestations urgentes sur l'exécution des titres exécutoires et des jugements ou sur des mesures urgentes à prendre, sans préjudice du fond."

[2] Procedure Code, Article 28, modified by the Decree of 26th March 1900, and Article 29.

[3] Règlement Général Judiciaire, Articles 97 to 105.

movables, furnishing places let, notice of cancelling of contract, or expulsion from places let, when the amount of the lease does not exceed 1000 piastres a year; (*b*) actions in reference to damage to fields, fruits, and crops, care of canals, the payment of wages of servants, workmen, or employés. Also with appeal, all possessory actions founded on acts committed within the year of possession, where the ownership is not contested, actions in reference to boundaries, and in reference to the distance fixed by law or custom for constructions, or injurious works or plantations. The Summary Court has also the right to decide finally in all cases allowed by the law, or if the parties consent in all cases voluntarily submitted to it by the parties.

The ordinary Civil Court consists of a Bench of five judges, of whom three are foreign and two native. A foreign judge, who is either the vice-president or the deputy vice-president of the Court, presides. It acts as an Appeal Court in all cases in which an appeal is allowed from the Summary Courts, except in reference to possessory actions, réintégrande, and actions in respect to leases of wakf lands, which are taken before the Court of Alexandria. It acts as a First Instance Court in all civil actions the value of which is indeterminate, or is greater than 1000 piastres; it also acts as a Court of First Instance, but without appeal, in all cases of a value less than 10,000 piastres which are not within the competence of the Summary Court.[1] The ordinary Commercial Court also consists of five judges, of whom three are foreign and two native, but this Bench is assisted by the presence of two assessors, who are chosen from among the more important merchants, one being a foreigner and the other a native. At the commencement of each year a list of assessors is prepared, and from this list two are chosen for each case. A foreign judge presides. The Court sits in first instance in all commercial cases which are not within the competence of the Summary Court, and without appeal in all commercial cases where the value is less than 10,000 piastres.[2] The Court of Appeal has two chambers, each of which has a Bench of eight judges, five of whom are foreigners and three natives, one of the foreign judges acting as president. Its competence includes appeals from the

[1] Procedure Code, Articles 32 and 390, modified by the Decree of 26th March 1900.

[2] Procedure Code, Article 33, modified by the Decree of 26th March 1900.

Courts of First Instance, whether civil or commercial, and certain appeals from the Summary Courts. There is no Court of Cassation for civil or commercial cases.

The penal jurisdiction of the Mixed Courts includes police contraventions committed by a foreigner against another foreigner or a native, and certain delicts and crimes committed by or against the judges and officials of the Mixed Courts. The Court competent to try police contraventions consists of a single foreign judge appointed in the same manner as the Summary Court Judges, appeal being allowed in cases where the penalty inflicted was imprisonment; there may also be recourse in cassation. The Court competent to try delicts consists of two foreign judges and one native judge, assisted by four assessors, chosen for each case from lists furnished by the consuls and local authorities for each year. All the assessors should be foreign if the accused is a foreigner, and two should, if possible, be of the same nationality as the accused.[1] When a native is the accused a difficulty arises which it is hoped will be removed by the acceptance of the Egyptian Government proposal made to the International Commission at present sitting. The proposal is in the following terms:—"Si l'inculpé est indigène, ou si des poursuites sont dirigées contre des étrangers et contre des indigènes, la moitié des assesseurs sera indigène."[2] The Court competent to try crimes is called an Assize Court, and consists of three Judges of the Court of Appeal, of whom two are foreign and one native. They are expressly delegated for the purpose at the commencement of each year by the General Assembly of the Court.[3] This Court is assisted by twelve jurymen, the arrangements in regard to whom are the same as in the case of the assessors in delicts.[4] The Court of Cassation consists of five foreign and three native judges. It is a chamber of the Court of Appeal, but in cases coming from the Assize Court no judge who sat in the Assize Court may sit in the Court of Cassation. Cassation is only allowed when

[1] Règlement d'organisation judiciaire, title II. Article 3, modified by Decree of 26th March 1900. When there are several accused and they are foreigners of different nationality, they should, wherever possible, have at least one assessor of their own nationality; but where there are more than four this ceases to be possible, and the accused draw lots to determine which of them are to be tried by their own assessors.

[2] Now accepted, Decree, Dec. 24, 1906.

[3] Règlement d'organisation judiciaire, II. Art. 4.

[4] Decree, Dec. 24, 1906.

there has been a sentence of condemnation—(*a*) If the fact mentioned in the judgment does not constitute a punishable offence; or (*b*) if the law has been improperly applied; or (*c*) if there has been some substantial nullity in the procedure.[1] A special council of two foreign judges and one native judge performs the duties of examining magistrate. Its duties do not extend to police contraventions, but "toutes les poursuites pour crimes et délits feront l'objet d'une instruction qui sera soumise à la chambre du conseil."[2]

The present situation in regard to appeal is open to considerable criticism. There are two chambers in the Court of Appeal at Alexandria, and each of the three First Instance Courts act as Appeal Courts from the Summary Courts of their district. The result might very well be that the same point should be raised in two cases which might come before two Appeal Courts at the same moment, and these Courts might give different decisions, thus leading to the existence of two conflicting decisions, which would be final and of equal weight.[3] The Egyptian Government submitted a scheme to the International Commission of 1904, whereby these difficulties should be met by providing "machinery for bringing disputed points of law before the General Assembly of the Court of Appeal, with a view to settling the law." This scheme unfortunately did not meet the approval of the Commission, who decided not to modify the present position in reference to appeals from the Summary Courts, but made the following proposal in reference to the solution of the difficulty as it affected the Court of Appeal:—"Toutes les fois que dans l'examen d'une affaire, l'une des deux Chambres de la Cour estimera que sur le point de droit à décider, il y a contrariété d'arrêts antérieurement rendus, et sera d'avis de s'écarter d'une jurisprudence antérieure, elle pourra ordonner la réouverture des débats et renvoyer la cause devant la cour entière, qui se complètera,

[1] Code of Criminal Instruction, Articles 153, 154, 175, 250, and 252.

[2] Règlement d'organisation judiciaire, title II. Articles 2 and 12 to 21, and the Code of Criminal Instruction, chap. viii.

[3] "In the Mixed Tribunals system there is no Court of Cassation, and this inconvenience has become more marked since the appeals from the Summary Courts, instead of going, as heretofore, before the Alexandria Court of Appeal, have been dealt with by the three Tribunals of First Instance under the Decree of 26th March 1900. Moreover, there is, at times, a more or less marked disagreement in the view of certain questions taken by the two Chambers of the Court of Appeal, and no machinery is provided for settling the law upon such matters."—The Judicial Adviser's Report of 1904, p. 50.

en cas d'absence ou d'empêchement d'un ou plusieurs conseillers, par les juges de première instance. Il n'y aura pas lieu à la récusation péremptoire. Le Ministère public donnera ses conclusions par écrit."[1] There is a somewhat similar practice in the Court of Session in Edinburgh. When a case comes before either Division of the Inner House, involving a point of law which has previously been decided by the other, and the Division considering the question cannot agree with the previous decision, the two Divisions form themselves into a single court of seven judges and reconsider the whole question. The Judicial Adviser, in referring to this decision in his Report for 1904, makes the following remarks:[2] "It is to be hoped that it may prove a palliative, in a certain degree, for the evils referred to; but it is most regrettable that it should have proved impossible to devise any scheme for remedying the contradictions and divergences in the decisions of the Tribunals of First Instance, sitting in appeal, because many of the questions with which they have to deal never came before the Court of Appeal at all. It is only fair, however, to state, while on this subject, that the contradictions and divergences in question—for the settlement of which it was so very desirable to provide — are due far less to any fault which could be found with the personnel of the Mixed Tribunals, than to the intrinsic defects of the law provided for the judges to administer."

The competence of the Mixed Courts, as contrasted with the Native and Consular Courts, is determined by the general principle that they are exclusively competent in all civil and commercial cases between foreigners of different nationalities or between natives and foreigners,[3] the Consular Courts having competence in such cases where both parties are of the same foreign nationality, and the Native Courts where both parties are native. The Mixed Courts

[1] Now law by decree, 24th Dec. 1906.

[2] The Judicial Adviser's Report for 1904, p. 51.

[3] Ces tribunaux connaîtront seuls des contestations en matière civile et commerciale entre indigènes et étrangers et entre étrangers de nationalités différentes, en dehors du statut personnel.

Ils connaîtront seulement des actions réelles immobilières entre indigènes et étrangers ou entre étrangers de même nationalité ou de nationalités différentes.

La Municipalité d'Alexandrie, dans ses rapports avec indigènes, n'est pas justiciable des tribunaux mixtes. Règlement d'organisation judiciaire, Article 9 as modified by Decree, 26th March 1900.

have also competence in all actions referring to immovable property in which a foreigner is interested, and that even when the two parties are foreigners of the same nationality; but the Native Courts are competent when both parties are natives.[1] The question of competence thus depends on that of nationality. What, then, does the Règlement d'organisation judiciaire mean by "étranger and indigène?" All Ottoman subjects are considered natives, and all non-Ottomans foreigners,[2] and it is not necessary that the foreigner's Government should have received Capitulations or have been a party to the institution of the Mixed Courts. Persons under the "protection" of a foreign State are also regarded as under the jurisdiction of the Mixed Courts. Such persons were, under the Capitulations, entitled to the same privileges as subjects of the protecting State, and since the Capitulations continue to subsist, except in so far as they have been expressly abrogated, and this question was left unaltered,

[1] "La compétence basée sur la nature, réelle immobilière de la demande doit s'entendre restreinte aux actions entre étrangers et indigènes et entre étrangers de la même nationalité. Elle ne saurait être étendue aux actions réelles immobilières entre indigènes.

"En cas de contestation de la part du défendeur, il incombe au demandeur de fournir la preuve qu'il appartient à une nationalité différente de celle du défendeur, ce fait constituant la condition essentielle de la compétence des tribunaux mixtes à connaître de l'action."—Alexandria, 17th May 1876, R. O. i. p. 67.

[2] Alexandria, 1st March 1877, R. O. ii. p. 157, Persians held to be "étrangers."

"Les tribunaux de la Réforme sont seuls compétents à connaître des contestations entre indigènes et étrangers; par le terme 'étrangers,' il faut entendre toutes personnes non originaires du pays.

"L'adhésion à la nouvelle organisation judiciaire n'était nécessaire que de la part des puissances dont les sujets jouissaient des droits et privilèges garantis, soit par les capitulations, soit par des usages extensifs de celles-ci.

"Le traité du 20 décembre 1875 entre la Sublime Porte et le gouvernement persans reconnaît explicitement aux sujets persans la qualité d'étrangers, et stipule qu'ils seront traités sur le pied de la nation la plus favorisée.

"Ce traité, par cela qu'il a été contracté à une époque où la Réforme judiciaire égyptienne était déjà en vigueur, est tout autant applicable, en ce qui concerne les dispositions promulguées en Egypte, pour régler les intérêts des étrangers, qu'en ce qui concerne les avantages généraux accordés aux étrangers résidant dans les autres parties de l'Empire ottoman."

Alexandria, 8th June 1879, R. O. iv. p. 390, subjects of Morocco held to be "étrangers."

"Le Maroc, jouissant d'une entière autonomie politique et étant gouverné par un souverain indépendant de l'empire ottoman, ses sujets doivent être considérés comme étrangers et, partant, ils sont justiciables des tribunaux de la Réforme dans leurs rapports avec les sujets locaux."

The same decision was given in reference to subjects of Algiers.—Alexandria, 16th February 1882, R. O. vii. p. 93.

protected persons are still entitled to the same privileges as subjects, that is to say, they are under the jurisdiction of the Mixed Courts. Nationality is, as a rule, determined by a consular certificate in the case of a foreigner,[1] and by a certificate from the local authority in the case of a native; and, if there is any conflict, it must be decided diplomatically, the case being adjourned until the negotiations are finished. A change of nationality by one of the parties during the course of the action does not affect the question of competence: "Le changement de nationalité des parties, survenu dans le cours du procès, ne saurait avoir pour effet de modifier la compétence du tribunal mixte."[2]

The result of these decisions has been to extend the jurisdiction of the Mixed Courts beyond what might have been expected from the original article of the Règlement; but the absolute incompetence of the Native Courts during the earlier days of the Mixed Tribunals led all parties to concur in this extension, and, as we shall see later, the natives themselves did all in their power to escape from the jurisdiction of their own courts, and have their actions tried by the Mixed Courts. One of the most important methods by which the Mixed Courts increased their competence, to the disadvantage of both the Consular and Native Courts, was by the development of the theory of Mixed Interest. The Règlement d'organisation judiciaire, in defining the competence of the Mixed Courts, limits it to cases between foreigners of different nationalities, or between foreigners and natives,

[1] "Les certificats de l'autorité consulaire déclarant formellement qu'un individu est considéré comme sujet de la nation dont cette autorité relève, font preuve de la nationalité déclarée dans ces certificats."—Alexandria, 7th December 1876, R. O. ii. p. 38. For conflict, see Alexandria, 19th April 1876, R. O. i. p. 31.

[2] Alexandria, 1st June 1881, R. O. vi. p. 184.

"Le changement d'état survenu chez une des parties, à moins qu'il n'ait pour effet de la soustraire d'une manière absolue à la juridiction des tribunaux de la Réforme et de lui constituer une position privilégiée, telle à ne le faire dépendre aucunement de ces tribunaux, soit comme demandeur, soit comme défendeur, ne s'oppose pas à ce qu'un procès compétemment introduit et poursuivi devont ces tribunaux soit continué et terminé devant les mêmes, selon la règle: '*Ubi initium ibi finem habere debet judicium.*'"—2nd December 1880, R. O. vi. p. 20.

"Les tribunaux de la Réforme, compétemment saisis de la connaissance d'un litige entre parties de nationalités différentes, continuent d'être compétents pour statuer sur la contestation, dans le cas où, par suite de changement de nationalité de l'une des parties, survenu dans le cours de l'instance, les parties ont cessé d'appartenir à des nationalités différentes."—21st April 1881, R. O. vi. p. 154.

but in praetiee there are a very large number of transaetions in whieh more than two parties are interested; and it is not seldom that some third party may be interested indireetly. The question raised was whether the Mixed Courts should be considered eompetent if this third party was a foreigner. After eonsidering the eases deeided in referenee to this question, there ean be no doubt that it has been the uniform practiee of the Mixed Courts to elaim eompetenee whenever there was the slightest exeuse for so doing. The prineiple may be stated as follows: "The eompetenee of the Mixed Courts is not determined simply by the nationality of the parties to the case, but also, and more espeeially, by the nature of the interests involved in the aetion. As soon as a 'mixed interest' clearly arises in any ease brought before the Courts, the Mixed Courts should have jurisdietion, even if the parties to the ease are of the same nationality, native or foreign. As a result, so soon as a 'mixed interest' appears in an action brought before the Consular Courts by two foreigners of the same nationality, or before the Native Courts by two natives, the Consular or Native Courts should, *ipso facto*, cease to have eompetence; and all the procedure which passed before the appearance of the 'mixed interest' should be eonsidered as not having taken place, this proeedure being entirely without effeet in regard to the third party, whose intervention has given rise to the 'mixed interest.'"[1]

Artiele 13 of the Règlement d'organisation judieiaire justifies the theory of Mixed Interest, at least in one particular ease: "Le seul fait de la eonstitution d'une hypothèque, en faveur d'un étranger, sur les biens immeubles, quels que soient le possesseur et le propriétaire, rendra ees tribunaux eompétents pour statuer sur la validité de l'hypothèque et sur toutes ses eonséquenees, jusques et y eompris la vente foreée de l'immeuble, ainsi que la distribution du prix." The practiee of the Mixed Courts has, however, extended so far that the Egyptian Government was foreed to intervene by submitting eertain reforms, limiting the theory, to the International Commission whieh sat in 1898. These reforms, unfortunately, met with little or no success. The theory may be considered from two points of view. The "mixed interest" may arise, on the one hand, by the appearanee of a third party who has an indireet interest in the subjeet of litiga-

[1] Du Rausas, vol. ii. p. 327. See also Lamba, "La Condition Juridique des Européens en Egypte," Paris, 1896, pp. 133 to 183.

tion—this may be the case in bankruptcy, saisie arrêt, assignment, or as the result of the registration of a title in the Mixed Courts; or it may result, on the other hand, from one of the parties to the case being a juristic person, an individual member of which is a foreigner, as is the case in certain of the Egyptian Administrations and in certain Limited Liability Companies.

The application of the theory of "mixed interest" to cases of bankruptcy is of frequent occurrence. If one of the creditors belongs to a different nationality from that of the bankrupt, a mixed interest arises, and the case must come before the Mixed Courts. It is sufficient if this creditor's interest should only appear after the procedure has commenced, and this appearance will nullify all procedure which may have taken place before the Consular or Native Courts.[1] In a Saisie Arrêt, arrestment, or garnishee order, the case is equally simple, since there are three persons involved; and the application of the theory of mixed interest to this case has led to it being used as a method of escaping the jurisdiction of the Native Courts. An example will show how the practice was carried out. "A native creditor, having a dispute with his native debtor, would garnishee a foreigner, who, as he alleged, owed money to his debtor, and obtain an injunction forbidding him to part with any sums he might otherwise have paid to the latter; or, where two natives were engaged in a law-suit before the Native Courts, a foreigner, by a collusive arrangement with the defendant, would attach some

[1] "Le tribunal mixte de commerce est compétent pour déclarer la faillite d'un commerçant, quoiqu'elle soit demandée par un seul créancier de la même nationalité que le failli, si d'ailleurs il résulte des pièces produites qu'il existe d'autres créanciers appartenant à différentes nationalités."—Case quoted by Borelli, p. 6, Alexandria, 31st March 1881, El Chamaki C. Faillite Omar Zasuari. Also, in the same sense, Alexandria, 8th February 1877, R. O. ii. p. 105.

"En matière de contestations entre sujets de nationalités différentes, la règle est la compétence des tribunaux de la Réforme; l'exception est la compétence de la juridiction consulaire pour les affaires relatives au statut personnel.

"La mise en état de faillite est le premier acte de la liquidation générale forcée des biens du débiteur, liquidation qui a le caractère d'une contestation judiciaire.

"Du moment où dans une faillite les intérêts de personnes appartenant à des nationalités différentes sont engagés, la compétence des tribunaux mixtes ne saurait être contestée.

"Si la faillite a déjà été déclarée par un tribunal consulaire, lorsqu'il n'y avait d'intéressés connus que des créanciers appartenant à la nationalité du failli, ce tribunal, alors compétent, se trouve dessaisi par le seul fait de l'intervention de créanciers de nationalités différentes."

imaginary sum, said to be owed to him by the plaintiff, and claim that in the event of judgment for the plaintiff the debt should be paid by the defendant to himself, and not to the plaintiff in the action. In both these cases the jurisdiction of the Mixed Tribunals was held to be immediately founded, and all further action on the part of the Native Courts forthwith paralysed." [1] The matter was brought before the International Commission of 1898, and legislation introduced to prevent the abuse to some extent.[2] Another method of transferring a case from the competence of the Native Courts to that of the Mixed Tribunals is also connected with this theory of mixed interest. It arose in reference to assignments of claims. If a contract existed between two natives, but the creditor assigned his right to a foreigner, the Mixed Courts became competent. The impropriety of this procedure was aggravated by the fact that it was entirely contrary to the principles of Mohammedan Law, since, according to that law, no pecuniary claim can be transferred by the creditor without the consent of the debtor. The International Commission of 1898 remedied this defect by enacting that "purely civil engagements contracted between natives cannot be assigned save with the consent of the debtor, which shall be proved by a document in writing, or by recourse to the judicial oath."

The competence of the Mixed Courts in reference to immovable property [3] extends to all actions between foreigners or natives, or

[1] The Judicial Adviser's Report, 1899.

[2] "Where a foreigner is garnisheed by a native in respect of a debt owed to the latter by another native, the suit concerning the validity of the attachment shall be brought before the Mixed Tribunals, but the dispute concerning the claim itself, as between the two natives, shall continue to be subject to the jurisdiction of the Native Courts."

"If, during the continuance of a suit between two natives before the Native Courts, a foreigner attaches the litigious claim, this attachment shall only take effect upon whatever sum the Native Tribunals may adjudge to be due, and the attaching creditor shall not be enabled to take action against the person garnisheed until the suit is terminated, save in the case of collusion between the debtor and the person garnisheed, or when the parties themselves put an end to the suit."

[3] The question of what actions in regard to immovable property are included in this article has caused some difficulty. It has, however, been very fully discussed by Du Rausas, vol. ii. pp. 354 to 357, who sums up the matter as follows:—"En réalité, la législation mixte, œuvre pratique sans prétention doctrinale, ignore la classification des actions immobilières en actions réelles et actions personnelles; elle reconnaît une seule classe d'actions immobilières qui comprend les actions personnelles immobilières et les actions réelles immobilières proprement dites, et elle confond les unes et les autres sous la dénomination unique d'actions

between foreigners, even when they are of the same nationality. A certain amount of doubt had arisen as to the meaning of the last sentence of the article of the Règlement, "personnes appartenant à la même nationalité." The Mixed Court of Cairo held that this included actions brought by one native against another, while the Court of Alexandria held that such cases were within the competence of the Native Courts. The question was brought before the International Commission of 1898, which decided in favour of the Court of Alexandria, and the Decree of 26th March 1900 made the necessary amendments. The question of mixed interest, in this connection, arose in reference to the system of registration of title as practised in Egypt. There are in Egypt three distinct authorities having power to register titles transferring immovable property or constituting real rights. These are the Mixed Courts, the Native Courts, and the Mehkemah. There are two forms of registration—transcription in the case of titles transferring ownership or constituting a real right, and inscription as in the case of a security of hypothec. The Mixed Court of Appeal has held that a mixed interest arises from the fact of a foreigner inscribing a right of hypothec at the registry of the Mixed Courts, and that thereby they acquire exclusive jurisdiction in reference to the immovable, and that all acts of the Native Courts which tend to modify the situation of the immovable are rendered of no effect.[1]

The second form of the theory of Mixed Interest is best explained by realising that there are two kinds of juristic person in Egypt. The first has a "Native" personality, and comes within the jurisdiction of the Native Courts in all its dealings with natives; while the second has an "Egyptian" personality, and its dealings with natives are within the competence of the Mixed Courts. But both classes of juristic persons, whether "Native" or "Egyptian," are Egyptian in

réelles immobilières, car elle considère, non pas, à vrai dire, leur fondement, mais le but auquel elles tendent, qui est, quel que soit ce fondement, la reconnaissance ou l'exercice, l'attribution ou la constitution, la rétrocession ou la récupération d'un droit réel immobilier. Concluons donc en toute certitude que les tribunaux mixtes ont compétence, et par conséquence compétence exclusive, pour statuer sur toutes les actions immobilières entre étrangers appartenant à la même nationalité. Cette compétence exclusive existe, d'ailleurs — et aucun doute ne peut s'élever sur ce point—au possessoire aussi bien qu'au pétitoire."

[1] 23rd December 1891, B. L. J., iv. p. 58; 23rd November 1892, B. L. J., v. p. 22; 1st March 1893, B. L. J., v. p. 152; and a large number of other cases in the same sense.

the sense that they are not foreign. In regard to the Egyptian Government, the majority of the administrations or departments are "Native," and cases arising between them and natives are brought before the Native Courts; but there are also a number of administrations directly connected with the central Government which are not "Native" but "Egyptian," so that cases arising between them and natives are brought before the Mixed Courts. These "Egyptian" administrations were all specially created by the International Conventions which were consented to by the Powers, in order to secure the interests of the creditors of the Egyptian Debt. Speaking generally, these bodies were given the management of certain state properties, with the duty of collecting their revenues and using them for the service of one or other of the debts; and to insure their proper administration, a certain proportion, at least, of their members were foreigners. In the first place, the Decree of 7th May 1876, which created the Unified Debt, and the Law of Liquidation of 17th July 1880 set aside the receipts of the Egyptian Customs and the taxes from the four provinces of Gharbiah, Manoufiah, Behera, and Assiut for the service of the Unified Debt; while the receipts of the Egyptian Railways and Telegraphs and the Port of Alexandria were affected for the service of the Privileged Debt by the Decree of 1876, the Law of Liquidation, and the Decree of 27th July 1885.[1] Similarly a loan was arranged in 1877, the Daïra Saniah Estates being set aside as security for its payment; while another loan was negotiated in 1878 secured on the Domains Estates. In the second place, not only were these revenues expressly set aside for the service of these different debts, but these International Agreements set up special administrations to see that the revenues were employed for the purposes intended. Thus the Caisse de la Dette[2] was created by the Decree of 1876, and now consists of six foreign commissioners nominated by the six Great Powers and appointed by the Egyptian

[1] Putting into effect the Convention of London of 1885.

[2] Decree of 2nd May 1876, Article 4, and Law of Liquidation, Article 38: "Les commissaires de la dette, représentants légaux des porteurs de titres, auront qualité pour poursuivre, devant les tribunaux de la Réforme, contre l'administration financière représentée par notre ministre des finances, l'exécution des dispositions concernant les affectations des revenus, les taux d'intérêt des dettes, la garantie du Trésor, et généralement toutes les obligations qui incombent à notre Gouvernement, en vertu de la présente loi, à l'égard du service des dettes privilégiée et unifiée." Article 37 of Decree of 28th November 1904 is practically in the same terms.

Government, their duties being to receive the revenues affected for the service of the Unified and Privileged Debts, and to see that the interest is duly paid. By the arrangement of 1877, the Daïra Estates were placed under an administration consisting of three commissioners, an Egyptian, an Englishman, and a Frenchman, the first acting as president, and in 1878 the Domains Estates were placed under a similar administration. In 1876 another administration, consisting of an English commissioner as president, and a French and Egyptian commissioner, was appointed to administer the Railways, Telegraphs and Port of Alexandria. In all these commissions or administrations there was not only a strong foreign element, but their principal duty was to administer the different sources of revenue in the interests of the foreign creditors; the "mixed interest" was therefore easily established.[1] The only difficulty in the way of declaring the Mixed Courts competent was the fact that, in certain instances at least, the International Conventions expressly stated that the commissioners were Egyptian officials,[2] but this argument was not strong enough to prevail against the undoubted mixed interest, and the courts had no difficulty in declaring that, although the administrations were Egyptian, they were not "Native," and that all cases arising between them and natives should come before the Mixed Courts. In reference to the Customs Administration, the argument in favour of a "mixed interest" was not so strong, since, although its revenues were affected for the service of the debt, it was

[1] Decisions of the Mixed Court in reference to the Daïra Administration: Alexandria, 10th March 1887, Borelli, p. 7, and 14th March 1888, R. O., xiii. p. 112: "Les tribunaux mixtes sont compétents pour connaître de toutes les contestations entre la Daïra Sanieh et des tiers, même indigènes.

"La compétence se détermine d'après le caractère des intérêts en cause, et non d'après la personnalité de ceux qui les représentent.

"Si le directeur de la Daïra Sanieh agit seul pour la Daïra en justice, il ne peut agir que sur l'autorisation du conseil de direction, composé, en dehors de lui, de deux Européens.

"Il est de jurisprudence constante qu'alors même que le débat existerait entre deux indigènes, s'il vient à s'y manifester d'une manière certaine un intérêt mixte, même non intervenant ou appelé, les tribunaux de la Réforme ont seuls autorité pour y statuer.

"D'après le texte et l'esprit du Règlement d'organisation judiciaire, les intérêts mixtes ne peuvent, en cas de difficultés, dépendre d'autres tribunaux que des tribunaux mixtes; s'il en était autrement, toutes les garanties fixées par l'institution de la Réforme se trouveraient par le fait indirectement annulées dans leurs effets." The Domains Administration, Alexandria, 12th May 1881; R. O., vi. p. 171; and the Railway Administration in 1892.

[2] Decree of 2nd May 1876, preamble.

administered by a native department, the officials of which were directly under the Ministry of Finance, and appointed in the same manner as other officials of that department.[1]

The position of certain of these administrations has been affected by the Decree of 28th November 1904, which put in force the agreement made between France and England in that year.[2] Thus the revenues of the Railways, Telegraphs, and Port of Alexandria are no longer affected to the service of the debt, but are paid direct into the Egyptian treasury, the mixed administration being abolished; in consequence, an action by a native against the Railway Administration, for instance, would now be tried by the Native Courts.[3] The revenues of the customs are also no longer affected, so that no argument in favour of a mixed interest could now be brought forward in reference to that administration. The Decree of 1904 expressly leaves the Caisse de la Dette and the administrations of the Daïra and Domains Estates as they were; but in October of 1905 the Daïra debt was completely paid off, and the administration ceased to act.

The Mixed Commercial Code[4] enacts that "Limited liability companies can only exist by virtue of a Firman of the Khedive approving the provisions contained in the Memorandum of Association and authorising the incorporation of the company;" and further, that all "limited liability companies which are founded in Egypt shall be of Egyptian nationality, and should have their headquarters in Egypt." If such company has shares held by foreigners, the Mixed Courts hold that this is sufficient to create a "mixed interest" and give them exclusive competence. This has been held in reference to the Suez Canal Company,[5] which was expressly declared to be an

[1] Alexandria, 22nd May 1889, B. L. J., I., p. 142: "Les tribunaux mixtes sont incompétents pour juger les contestations entre l'administration des douanes et les sujets locaux.

"La seule affectation des recettes de l'administration des douanes égyptiennes au service de la dette unifiée de l'Etat ne saurait enlever à cette administration son caractère primitif d'administration indigène.

"Si l'existence d'un simple *intéret* mixte doit entraîner l'incompétence de la juridiction indigène et fonder celle de la juridiction mixte, il faut tout au moins que cet intérêt soit fondé sur un droit qui pourrait éventuellement servir de base à une intervention dans le procès."

[2] 8th April 1904.

[3] See case of *Younes Ibrahim* against *the Egyptian Railways Administration*, decided in 1905, where the Mixed Appeal Court of Alexandria held that they were incompetent.

[4] Mixed Commercial Code, Articles 46 and 47.

[5] "La compagnie universelle du canal

Egyptian company by the Convention of 22nd February 1866; and in the same manner decisions have been given in favour of the competence of the Mixed Court in reference to the Ottoman Bank, which by the Act of Concession, 18th September 1878 and 5th April 1879, was declared Ottoman, and the Cairo Water-works Company. When foreigners hold shares in Egyptian companies they cease to be native companies and become "Egyptian," in the sense that the Mixed Courts are alone competent to try cases between them and natives. The object of the legislator in requiring Khedivial authorisation is said to be to prevent these companies coming under the jurisdiction of the consuls, and ceasing to be under the application of Egyptian law. If an Egyptian company were entirely in the hands of native shareholders the Native Courts would alone be competent; and a foreign company founded abroad, in accordance with the laws of that foreign State would be considered to have the nationality of that State, and treated as foreign.

Another result of the theory of Mixed Interest is to place the Municipality of Alexandria under the exclusive jurisdiction of the Mixed Courts. This Municipality was constituted by a Decree of

de Suez, à laquelle ont été confiés des intérêts internationaux, est justiciable, pour tous ses procès nés en Egypte, soit dans ses rapports avec le Gouvernement, soit dans ses rapports avec les indigènes ou les étrangers, à quelque nationalité qu'ils appartiennent, des tribunaux de la Réforme, seuls compétents dans le pays pour statuer sur les contestations mixtes."—Alexandria, 20th May 1880, R. O., v. p. 263.

Similar decision in the case of *The Egyptian Government* v. *The Ottoman Bank*, Alexandria, 8th May 1890, B. L. J., ii., p. 255. Also in a case brought by a native against the Cairo Water-works Company, Alexandria, 21st June 1894, B. L. J., vi., p. 320, in which it was stated that: "La compétence des juridictions se détermine d'après le caractère des intérêts engagés au procès, et non d'après la personnalité de ceux qui les représentent. . . . Attendu dès lors quelle que soit la nationalité des parties en cause, que les tribunaux de la Réforme, appelés, d'après l'esprit et le texte du Règlement d'organisation judiciaire, à sauvegarder les intérêts mixtes, ont seuls autorité pour statuer sur les différends de cette nature; attendu qu'en effet, s'il en était autrement, toutes les garanties fixées et mises sous la sauvegarde de l'institution même de la Réforme se trouveraient par le fait indirectement annulées dans leurs effets; que peu importe donc que le litige soit engagé entre deux personnalités de la même nationalité, du moment que l'intérêt mixte s'y manifeste d'une manière certaine et incontestable. . . ."

Other companies may likewise have a mixed interest: "La société en nom collectif formée entre deux ou plusieurs personnes de nationalité différente est mixte. En conséquence, elle est justiciable des tribunaux mixtes, pour les contestations entre associés ou avec les tiers étrangers ou indigènes."—Alexandria, 17th February 1887, R. O., xii. p. 73.

1890, which was submitted to the Powers before promulgation, and received their consent. It consists of twenty-eight members; six are ex-officio members, eight are nominated by the Egyptian Government, and fourteen are elected by different electoral divisions of the city. As not more than three of these elected members may be of the same nationality, eleven at least of their number must be foreigners. The mixed character of the Municipality is therefore evident from its constitution, and this character is strengthened by the fact that one of its most important duties is to levy local taxes on the foreigners resident in Alexandria. An argument based on Article 13 of the Decree constituting the Municipality has been unsuccessfully used to transfer the competence of cases between the Municipality and natives to the Native Courts; this article expressly states that the Municipality is of native nationality. In spite, however, of this article, the Mixed Courts have always maintained that, in view of the undoubted mixed interest involved, they, and they only, have competence in all cases brought by or against the Municipality, whether the other party is a foreigner or a native. The question was brought before the International Commission of 1898, and an amendment was introduced whereby it was declared that: "La Municipalité d'Alexandrie, dans ses rapports avec les indigènes n'est pas justiciable des tribunaux mixtes."[1]

The Mixed Courts have no competence in questions of Personal Statute;[2] the Consular and Religious Courts alone are competent in regard to such questions. If both parties to the action are foreigners of the same nationality, their Consular Court is competent, if both are natives the court of their Religious Community is competent; while, if the parties are of different nationalities, the defendant's court is competent, this court being the Consular

[1] Decree of 26th March 1900.

[2] "Les questions relatives à l'état et à la capacité des personnes et au statut matrimonial, aux droits de succession naturelle et testamentaire, aux tutelles et curatelles, restent de la compétence du juge du statut personnel. Lorsque, dans une instance, une exception de cette nature soulevée, si les tribunaux reconnaissent la nécessité de faire statuer au préalable sur l'exception, ils devront surseoir au jugement du fond et fixer un délai dans lequel la partie contre laquelle la question préjudicielle aura été soulevée, devra la faire juger définitivement par le juge compétent. Si cette nécessité n'est pas reconnue, il sera passé outre au jugement du fond." — Mixed Civil Code, Article 4.

See also the cases quoted by Borelli, p. 60, in reference to this article.

Court of the defendant if he is a foreigner, and one of the Religious Courts if he is a native. Personal Statute is defined by the Civil Code, and includes, "Les questions relatives à l'état et à la capacité des personnes et au statut matrimonial, aux droits de succession naturelle et testamentaire, aux tutelles et curatelles." The enumeration is held to be limitative, so that questions of bankruptcy and gift are not included; but the subjects named are taken in a wide sense, and all questions which can be included under the titles specially mentioned are considered to be of personal statute. Thus, "statut matrimonial" includes[1] the forms and procedure necessary for a valid marriage, questions of validity and proof, capacity, effects of marriage, the relationship between the parties and between parents and children, dissolution of marriage and its effects, marriage contracts, questions of dowry, and of gifts between husbands and wives. A question of personal statute need not necessarily arise as the principal point in an action, but may arise incidentally in another case which may be before the Mixed Courts. If this should happen, it is the duty of the court to adjourn until the question of personal statute has been decided by the competent Personal Court. The conditions for such adjournment are that the question of personal statute should be of such a nature that on its solution depends the decision in the principal action; but it is for the Mixed Court to decide whether adjournment is necessary, and it need only do so if the parties are in dispute as to the solution of the question of personal statute, and the court itself is in doubt as to this solution. Adopting this rendering of the clause, the Mixed Courts have decided in a number of cases that there was no need to adjourn, as they were in a position to settle the difficulty themselves—in this manner deciding cases which ought only to be decided by the Personal Courts. Once the Mixed Court has adjourned it must accept the decision of the Personal Court as final, and all that it can demand is proof that the decision was duly given by the competent court.[2]

[1] Alexandria, 7th June 1893, B. L. J., v. p. 298; Alexandria, 25th March 1897, B. L. J., ix. p. 246; Alexandria, 1st April 1891, B. L. J., iii. p. 278.

[2] Ghirghis El Kaiat c. Chenouda Korkos et autres. Alexandria, 18th March 1880, Borelli, p. 61; Mahmoud Ibrahim c. Ouissa Boctor. Alexandria, 23rd June 1880, Borelli, p. 61. Also, Alexandria, 9th June 1881, R. O., vi., p. 185. Alexandria, 20th June 1888, R. O., xiii., p. 273; Alexandria, 13th December 1888, B. L. J., p. 211; Alexandria, 10th July 1891, B. L. J., iii.

Actions of revindication of immovable estate possessed by an "établissement pieux," brought by a foreigner against such possessor, are not within the competence of the Mixed Courts.[1] Consular and diplomatic agents[2] enjoy complete immunity from the jurisdiction of these courts as a result of the conventions made between Egypt and the Powers in relation to the institution of the Mixed Courts. This provision has been given the widest interpretation. Thus it has been held that the parties cannot renounce their right,[3] that dragomen and every grade of consular officer are included, and that the question of incompetence may be raised at any stage in the course of the action. The position of such parties should be the same as that which they occupied before the Reform, when the maxim "actor sequitur forum rei" applied. In virtue of this maxim

p. 383; Alexandria, 18th March 1891, B. L. J., iii. p. 236; Alexandria, 10th February 1898, B. L. J., x. p. 136; Alexandria, 27th February 1896, B. L. J., viii. p. 138; Alexandria, 11th February 1897, B. L. J., ix. p. 185; Alexandria, 22nd December 1897, B. L. J., x. p. 58; Alexandria, 10th February 1898, B. L. J., x. p. 136.

If no decision has been given by the Personal Court within the period fixed for adjournment, it would appear that the Mixed Courts are entitled to decide the case themselves.—Du Rausas, p. 368.

[1] Règlement d'organisation judiciaire, Article 12:—

"Ne sont pas soumises à ces tribunaux les demandes des étrangers contre un établissement pieux, en revendication de la propriété d'immeubles possédés par cet établissement; mais ils seront compétents pour statuer sur la demande intentée sur la question de possession légale, quel que soit le demandeur ou le défendeur."

[2] "Les immunités, les privilèges, les prérogatives et les exemptions dont les consulats étrangers, ainsi que les fonctionnaires qui dépendent d'eux, jouissent actuellement, en vertu des usages diplomatiques et des traités en vigueur, restent maintenus dans leur intégrité; en conséquence, les agents et consuls généraux, les consuls, les vice-consuls, leurs familles et toutes les personnes attachées à leur service, ne seront pas justiciables des nouveaux tribunaux et la nouvelle législation ne sera applicable ni à leurs personnes, ni à leurs maisons d'habitation. La même réserve est expressément stipulée en faveur des établissements catholiques, soit religieux, soit d'enseignement, placés sous le protectorat de la France."—Convention agreed to between the French and Egyptian Governments, 25th September 1874, Borelli, p. cxi. The articles contained in the Conventions of other States are in similar terms.

[3] According to the principles of Public International Law, Ambassadors, and other persons who are entitled to the privilege of exterritoriality, can renounce this privilege in civil cases if they desire to do so, and may bring the action as plaintiffs in the courts of the country to which they are accredited. —Hall, "International Law," 4th ed., pp. 180 and 181.

Alexandria, 24th March 1881, R. O. vi. p. 121, and 18th March 1885, R. O. x. p. 52, for dragoman; Alexandria, 16th May 1878, R. O. iii. p. 249, consuls, etc., cannot renounce their right. Alexandria, 24th December 1879, R. O. v., the plea of incompetence may be raised at any stage.

a consular agent should sue a native in the Native Courts, but the Native Courts are now incompetent to try a civil suit to which a foreigner is a party. The illogical result of the literal interpretation of this immunity has, therefore, been a denial of justice; and the question was, therefore, brought before the International Commission in 1890, and again in 1898, and solved by a Decree of 1st March 1901: "All diplomatic and consular functionaries, sent by their respective Governments to Egypt (missi), and their families, may bring actions in the Mixed Courts as plaintiffs, but cannot be sued as defendants except by way of counter-claim within the limits of the principal claim. But if they are engaged in commerce or manufactories or own and exploit immovable estate in Egypt, they are subject to the jurisdiction of these courts for all commercial cases and for all actions in regard to immovables where their official functions are not involved."

Certain religious establishments under the protection of France, Austria, Germany, and Russia were placed in a similar position as consular and diplomatic agents by the Convention of 1874.[1] The Mixed Courts gave similar decisions in reference to their incompetence to try cases brought by or against such establishments, and the same difficulty arose. After the promulgation of the Decree of 1901, France and Austria negotiated with the Egyptian Government and obtained the same treatment for these establishments as had been accorded to consular and diplomatic agents. The position of the Russian and German establishments is, however, unaffected by these agreements.

The penal jurisdiction of the Mixed Courts includes the three categories of penal offences, crimes, delicts, and police contraventions;[2] but their competence in regard to these is not the same.

[1] See the article of the agreement between France and Egypt of 19th September 1874, quoted in the note above. See also, Alexandria 6th March 1879, R. O. iv. p. 181.

"Les établissements religieux placés, en Egypte, sous la protection du gouvernement austro-hongrois, ne sont ni justiciables de tribunaux de la Réforme, ni soumis à la nouvelle législation.

"Ils ne peuvent, en conséquence, ester en justice devant ces tribunaux, ni comme défendeurs, ni comme demandeurs."

[2] Règlement d'organisation judiciaire, Title II., Articles 6 to 10 :—

Article 6. "Seront soumises à la juridiction des tribunaux égyptiens les poursuites pour contraventions de simple police et, en outre, les accusations portées contre les auteurs et complices des crimes et délits suivants."

The competence of the Mixed Courts in reference to police contraventions is general, and applies to all cases of contravention committed by foreigners against Egyptian police laws: "Les

Article 7. "Crimes et délits commis directement contre les magistrats, les jurés et les officiers de justice, dans l'exercice ou a l'occasion de l'exercice de leurs fonctions,

"Savoir :

"(*a*) Outrages par gestes, paroles ou menaces ;

"(*b*) Calomnies, injures, pourvu qu'elles aient été proférées, soit en présence du magistrat, du juré ou de l'officier de justice, soit dans l'enceinte du tribunal, ou publiées par voie d'affiches, d'écrits, d'imprimés, de gravures ou d'emblèmes ;

"(*c*) Voies de fait contre leur personne, comprenant les coups, blessures et homicide volontaire, avec ou sans préméditation ;

"(*d*) Voies de fait exercées contre eux, ou menaces a eux faites, pour obtenir un acte injuste et illégal, ou l'abstention d'un acte juste et légal ;

"(*e*) Abus, par un fonctionnaire public, de son autorité contre eux, dans le même but ;

"(*f*) Tentative de corruption exercée directement contre eux ;

"(*g*) Recommandation donnée à un juge, par un fonctionnaire public, en faveur d'une des parties."

Article 8. "Crimes et délits commis directement contre l'exécution des sentences et des mandats de justice,

"Savoir :

"(*a*) Attaque ou résistance avec violence ou voies de fait contre les magistrats en fonctions, ou les officiers de justice instrumentant ou agissant légalement pour l'exécution des sentences ou mandats de justice, ou contre les dépositaires ou agents de la force publique chargés de prêter main forte à cette exécution ;

"(*b*) Abus d'autorité de la part d'un fonctionnaire public, pour empêcher l'exécution ;

"(*c*) Vol de pièces judiciaires, dans le même but ;

"(*d*) Bris de scellés apposés par l'autorité judiciaire, détournement d'objets saisis en vertu d'une ordonnance ou d'un jugement ;

"(*e*) Evasion de prisonniers détenus en vertu d'un mandat ou d'une sentence et actes qui ont directement provoqué cette évasion ;

"(*f*) Recel des prisonniers évadés, dans le même cas."

Article 9. "Les crimes et délits imputés aux juges, jurés et officiers de justice quand ils seront accusés de les avoir commis dans l'exercice de leurs fonctions, ou par suite d'abus de ces fonctions,

"Savoir:

"(*a*) Sentence injuste rendue par faveur ou inimitié ;

"(*b*) Corruption ;

"(*c*) Non révélation de la tentative de corruption ;

"(*d*) Déni de justice ;

"(*e*) Violences exercées contre les particuliers ;

"(*f*) Violation du domicile sans les formalités légales ;

"(*g*) Exactions ;

"(*h*) Détournement de deniers publics ;

"(*i*) Arrestation illégale ;

"(*j*) Faux dans les sentences et actes."

Article 10. "Dans les disposition qui précèdent, sont compris, sous la dénomination d'officiers de justice, les greffiers, les commis-greffiers assermentés, les interprètes attachés au tribunal et les huissiers titulaires, mais non les personnes chargées accidentellement, par délégation du tribunal, d'une signification ou d'un acte d'huissier.

"La dénomination de magistrats comprend les assesseurs."

contraventions sont les actes que la loi punit de l'emprisonnement pendant une semaine et au-dessous, ou d'une amende de 100 P. T. et au-dessous."[1] They are enumerated in Articles 331 to 340 of the Mixed Penal Code, but have been subjected to considerable modification. The competence of the Mixed Courts in reference to delicts and crimes is limited to those specially mentioned in Articles 7, 8 and 9 of the Règlement d'organisation judiciaire; but these courts are competent in such cases whether the offender is a native or a foreigner. There are three classes of cases mentioned. The first include a number of offences committed against the officials of the courts, such as "outrages par gestes, paroles ou menaces; calomnies, injures . . ."; the second include offences committed against these officers, "contre l'exécution des sentences et des mandats de justice;" and the third include certain offences committed by such officers themselves during the performance of their duties, or resulting from an abusive use of their powers. Their nature is shown by the following examples:—"Sentence injuste rendre par faveur ou inimitié; corruption . . . déni de justice . . . violation du domicile sans les formalités légales. . . ." Diplomatic and consular agents are entirely exempt from the penal jurisdiction of the Mixed Courts.[2]

The penal competence of the Mixed Courts was further extended by the Decree of 26th March 1900, which made them competent to try offences of simple and fraudulent bankruptcy committed by bankrupt merchants whose affairs might already be before these courts, or which were liable to be brought there; that is to say, in all cases where the bankruptcy was mixed. The punishment inflicted for fraudulent bankruptcy is from two to five years' imprisonment; while in simple bankruptcy,[3] which includes less serious offences, such as reckless and unjustifiable extravagance, fraudulent preference of creditors, or omission to keep books, the penalty is from one month to two years. As a result of the

[1] Mixed Penal Code, Article 4.

[2] The position taken up by the Mixed Courts in reference to the civil action which may be connected with a penal offence is clearly shown in the following judgment:—"Les tribunaux de la Réforme sont compétents pour statuer, entre parties de nationalité différent, sur les actions civiles résultant d'un crime ou d'un délit, alors même qu'ils ne seraient pas compétents pour statuer sur l'action criminelle. — Alexandria, 13th March 1879, R. O. iv. p. 191.

[3] Mixed Penal Code, Articles 293, 297.

penalties incurred in these offences, they are classified as delicts, and are therefore tried by the special courts appointed to try delicts. The object of the Powers in making them delicts and not crimes was to obviate the necessity of calling a jury, which would have been necessary had they been classified as crimes and placed within the jurisdiction of the Assize Courts. All other crimes and delicts committed by foreigners are within the exclusive competence of their consuls; while those committed by natives are within the competence of the Native Courts. Conflicts, in regard to penal competence, which may arise between the Mixed and Consular Courts are determined by a special commission, consisting of two judges appointed by the President of the Mixed Courts, and two consuls chosen by the consul of the accused.[1]

The execution of judgments delivered by the Mixed Courts was a subject of some difficulty in the Reform negotiations. The trouble arose out of the attempt to reconcile two conflicting principles—the inviolability of the foreigner's domicile, and the right of a court to have its judgments executed by its own officers. The practice before the Reform had been for consuls to execute all judgments delivered against their nationals. This insured the recognition of the privilege of domicile, but it sacrificed the right of a court to execute its own judgments. As a result of the Reform the first privilege is sacrificed in favour of the second.[2] "L'exécution des jugements aura lieu en dehors de toute action administrative, consulaire ou autre et sur l'ordre du tribunal. Elle sera effectuée par les huissiers du tribunal, avec l'assistance des autorités locales, si cette assistance devient nécessaire, mais toujours en dehors de toute ingérence administrative.

"Seulement, l'officier de justice chargé de l'exécution par le tribunal est obligé d'avertir les consulats du jour et de l'heure de l'exécution, et ce, à peine de nullité et de dommages-intérêts contre lui. Le consul ainsi averti a la faculté de se trouver présent à l'exécution; mais, en cas d'absence, il sera passé outre à l'exécution." In all cases where the execution involves the entry into the foreigner's domicile, notice of the execution must be given to the consul, with a statement of the day and hour when it is to take place; but if the consul does not attend, after receiving notice, the execution may take place in his absence. Failure to notify the consul of the time of execution

[1] Règlement d'organisation judiciaire, Title II., Article 23.

[2] Règlement d'organisation judiciaire, *ibid.*, Article 18.

renders the officer who was responsible liable to a penalty, and makes the execution itself liable to be declared void; but this nullity can only be claimed by the party himself against whom it was directed, and if he fail to claim it the nullity is covered.

There are a number of acts connected with the penal jurisdiction of the Mixed Courts which are apt to infringe the inviolability of the person or of the domicile of a foreigner. These questions required special treatment in order to safeguard the privileges accorded to foreigners by the Capitulations. In the case where it is intended to bring an accusation of crime or delict against a foreigner, his consul must be immediately notified. If search has to be made within the domicile of a foreigner, his counsel should be immediately notified; and "hors le cas de flagrant délit ou d'appel de secours de l'intérieur, l'entrée du domicile pendant la nuit ne pourra avoir lieu qu'en présence du consul ou de son délégué, s'il ne l'a pas autorisée hors sa présence."[1] The position of the foreigner is further safeguarded by a number of guarantees. Thus every criminal or delictual action against a foreigner must first pass through the hands of a council of Mixed Court judges, acting as Examining Magistrate. The procedure before this council, and that before the court during the action, should, if possible, be in one of the official languages known to the accused. The official prosecuting should also be a foreigner.[2] The attendance of foreigners as witnesses is provided for, and they are made liable to a fine if they fail to do so after receiving proper notification.[3] In the case of a condemnation to imprisonment the foreigner is imprisoned in the ordinary Egyptian prisons, but provision is made whereby the place of imprisonment may be inspected by the prisoner's consul.[4] The case of a death sentence is dealt with in Article 38 of the Règlement: "En cas de condamnation à la peine capitale, les représentants des puissances auront la faculté de réclamer leurs administrés. A cet effet, un délai suffisant interviendra entre le prononcé et l'exécution de la sentence, pour donner aux représentants des puissances le temps de se prononcer."[5]

[1] Règlement d'organisation judiciaire, Title II., Articles 13, 20 and 21.

[2] *Ibid.*, Title I., Article 27, and Title II., Articles 12, 14, 15 and 16. Also amendment to Article 27 by Decree of 26th March 1900.

[3] Règlement d'organisation judiciaire, Title II., Article 18.

[4] *Ibid.*, Title II., Articles 36 and 37.

[5] Consular decisions are *ipso facto* executory in Egypt, even in reference to the seizure of immovables, and the consul has full power to see to the

An important result of the institution of the Mixed Courts was to bring into unpleasant prominence the absolute inadequacy of the Egyptian Native Courts. These courts had been made the object of very adverse criticism by the International Commissions, which considered Nubar Pasha's suggested reforms; and immediately after the institution of the new courts both the Egyptian Government and its people became fully conscious of the need for reform. On the one hand, the Government appointed a commission to consider the possibility of reforming their courts; and, on the other, the people showed their preference for the new system by having recourse to measures, which were not always above suspicion, in order to bring their actions within the competence of the Mixed Courts. Lord Dufferin, in his Report of 1883,[1] describes very clearly the influence of the new courts upon the minds of the Egyptian people: "Here again," that is, in reference to the possible reform of native justice, "the progress of events has been telling in our favour, for though perhaps the Native Courts were never more imbecile and corrupt than they are at present, the institution on the confines of the land of the International Tribunals, and the administration within earshot of the people of what, with all its imperfections, is recognised with wonder as a justice which can neither be bought nor intimidated, has generated in the heart of the nation an unquenchable desire for righteous laws and a pure magistracy." Before describing the reform of the Native Courts and their present constitution, we shall refer briefly to the position of these courts before the British Occupation, and in doing so we cannot do better than adopt the description contained in Lord Dufferin's admirable Report:—

"The chief requirement of Egypt is Justice. A pure, cheap, and simple system will prove more beneficial to the country than the largest constitutional privileges. The structure of society in the

execution himself without the intervention of any Egyptian authority. The execution of foreign judgments, that is, judgments delivered by courts situated in a foreign country, depends upon the practice followed in the State where the judgment was given. The Egyptian system is based on reciprocity: "Les jugements rendus à l'étranger par un tribunal étranger seront exécutoires en Egypte sur simple ordonnance du président du tribunal, à charge de réciprocité."—Mixed Procedure Code, Article 468.

[1] Egypt, No. 6, 1883. "Further Correspondence respecting Reorganisation in Egypt." No. 38. The Earl of Dufferin to Lord Granville (received 14th February 1883). Also in the Recueil des Documents Officiels, 1883, p. 106.

East is so simple that, provided the taxes are righteously assessed, it does not require much law-making to make the people happy; but the most elaborate legislation would fail to do so if the laws invented for them were not equitably enforced. At this moment there is no real justice in the country. What passes under the name is a mockery, both as regards the Tribunals themselves, and the *corpus juris* they pretend to administer. In ancient days the Cadi, an essentially religious functionary, took cognizance of all disputes and gave judgment according to his own lights, without reference to any procedure; though he occasionally invoked such a text from the Koran, or such a phrase from a commentator as appeared most applicable to the matter in hand. His real inspiration, however, was too often drawn from the money bags of one, or perhaps both of the parties to the cause, while in his own person he was a mere tool, whenever it was necessary to make use of him, in the hands of the despotic Government of the day.

"Since the time of Mehemet Ali a hybrid sort of civil justice has been gradually established. The Cadis, or religious Judges, have, indeed, preserved their jurisdiction in questions relative to marriage, the descent of property, the guardianship of minors, etc.; but all other matters, whether civil or commercial, are now brought before the Tribunals which have superseded them. Of these there are three sorts: one of First Instance (Medjliss Ibtádieh), located in each Mudirieh; three Courts of Appeal (Medjliss Estisnaf); and a kind of Superior Council at Cairo (Medjliss el Ahkam), which has the faculty of quashing the judgments of the lower Courts and substituting its own decisions. But this organisation, though presenting a fair appearance on paper, is of little value as a justiciary. In the first place, none of the occupants of the Bench in any of these Courts have had a legal training, having been promiscuously selected from the general public, without reference either to their character or qualifications; and, in the next, there are no real laws in existence to guide their proceedings. At one time the French Codes are invoked; at another the regulations formerly in force before the Mixed Tribunals; and at another the precepts of the Mohammedan religion.

"The misery and confusion entailed by such a state of things has long since attracted the attention of the Egyptian Government. Their conscience was still further quickened by the institution of the

Mixed Tribunals, or rather by the recommendation of the 'Commission d'Enquête,' and in 1880 a Committee was appointed for the purpose of framing the necessary Codes and Procedures for the proposed Native Courts. The irruption of Arabi and his military associates into the Government suspended for a time the peaceful labours of this Commission; not, however, before it had succeeded in drawing out a 'Règlement Organique,' which was promulgated by Khedivial Decree on the 17th November 1881. In this document are laid down the principles essential to all justice, such as the equality of every citizen before the law and the independence of the Magistracy. The statute then proceeds to regulate the constitution of the Tribunals, their attributions, their discipline, and the general machinery required to provide the country with a complete judicial system.

"Immediately after the re-establishment of the Khedive's authority the beneficent labours of the Commissioners were resumed, and for some time past it has been sedulously prosecuting its task. It is the natural and legitimate ambition of the Egyptian Government eventually to supersede the International Courts by its own Tribunals . . . and, with this view, it has been proposed to adopt, *en bloc*, the Civil, Commercial, and Maritime Codes now in use by the former. Unfortunately, these Codes are anything but perfect. . . . But the most important feature of the new project consists in the introduction into the indigenous Tribunals of a European element. It seems to be universally acknowledged, both by the Government itself and by the native public opinion, that no measure short of this will ever definitely establish a spirit of purity and independence amongst the native magistracy. Servility and corruption are so intertwined with their habits and traditions that the automatic cleansing of their Courts is out of the question. But it is hoped that when once they have been rendered robust and pure by the presence of a few high-minded Europeans it may become possible to preserve indefinitely the standard of righteousness which shall have been thus established. . . ."

The Native Courts were reorganised by the Decree of 14th June 1883, a Court of Appeal being instituted at Cairo, and Courts of First Instance in several provincial centres.[1] The

[1] Decree, 14th June 1883, Article 5: "Il est institué un tribunal de première instance dans chacune des villes ci-après: Le Caire, Benha,

majority of the judges were natives, but a few Belgian and Dutch Judges were employed, and one Englishman. The first Procureur-Général was an Englishman; he was succeeded by a native; the post was then successively occupied by M. Legrelle,[1] Ismaïl Sabry, and Hamdullah Pasha; it is now filled by Mr. Corbet. The new system did not prove a success, and within a few years of its institution we find Lord Cromer writing of it in terms of the severest criticism:[2] "I regret to say that the results attained so far have been most unsatisfactory. Complaints against the Tribunals have been growing in importance during the last two or three years, but I have never known them so loud or so universal as they are at present. The most respectable classes amongst the Mussulman community are especially loud in their complaints. They say that the greatest nepotism exists in the distribution of appointments, and that Mohammedans are excluded in favour of Copts and Syrians. The members of the Bar say that it is useless to plead before Judges, many of whom are both corrupt and ignorant of law. The Government officials complain that the Tribunals almost invariably condemn the Government without much reference to the merits of the case. All classes agree that the procedure is slow and cumbersome. It is notorious that many of the Judges may be bought." It took more than four years to "cleanse" the Courts. Some years of transition were required before the old order could change and give place to the new, and in this transition stage the new courts were unfortunately required to put down an exceptional outbreak of lawlessness in the provinces, which was officially called "brigandage." Nubar Pasha, who was Prime Minister at the time, considered that the Native Courts were incompetent to deal with the matter, and appointed Commissions of Brigandage.[3] "These Commissions," Lord Cromer writes in 1889, "are, in reality, much the same as courts-martial. The fact that

Tantah, Mansourah, Alexandrie, Béni-Souef, Siout et Kenah." The Courts of Benha and Mansourah have been abolished; there is now a First Instance Court at Zagazig.

[1] Despatch of Sir E. Baring to the Marquess of Salisbury, Cairo, 18th February 1891: "It was at first proposed that a native gentleman . . . should be appointed Procureur-Général in the place of M. Legrelle . . . But, somewhat to my surprise, when the question came before a Council of Ministers, held under the presidency of the Khedive, it appeared to be the opinion both of the Khedive and of his Ministers that there was no native in Egypt capable of filling this post, which they considered should be held by a European."

[2] Despatch of Sir E. Baring to the Marquess of Salisbury, Cairo, 23rd October 1887.

[3] Decree, 31st December 1885.

they should exist is in itself a standing reproach to the system under which justice is administered in this country." Their object "was to deal more expeditiously and more severely than was possible through the agency of the Ordinary Law Courts with serious attacks on life and property, made by armed bands of marauders in the provinces."[1] Unfortunately, these Commissions gravely abused their authority, and were guilty of the gravest acts of injustice and cruelty, even resorting to torture to procure the condemnation of the accused,[2] and, as a result of Lord Cromer's action, they were abolished in 1889.[3] But, even before the evils of the Commissions of Brigandage had been dealt with, Lord Cromer again repeats his indictment against the Native Courts: "Without entering into any great detail, I venture to submit to your Lordship the main criticisms which may justly be made on the present administration of justice. Broadly speaking, these criticisms are two in number. The character of each differs considerably. In the first place, it may be said that the institution of the new Tribunals has not put a stop to the arbitrary and illegal practices of the past. In the second place, it may be said that the new Tribunals have been unable to cope adequately with crime, and to afford sufficient guarantees for the maintenance of public order and security."[4] The appointment of an English Adviser

[1] Two despatches of Sir E. Baring, 30th April 1889.

[2] See the two Reports of M. Legrelle, Procureur-Général, 6th April 1889, enclosed in Lord Cromer's despatch of 30th April 1889, and September 1889, enclosed in Lord Cromer's despatch of 3rd January 1890.

As a result of a special inquiry, 114 persons who had been committed to prison by the Brigandage Commission were released.

[3] By Decree of 15th May 1889. The correspondence in reference to the Commission of Brigandage has lately been republished in the White Book, Egypt, No. 3, 1906.

[4] Despatch of Sir E. Baring, 3rd January 1890. In developing his first criticism, Lord Cromer continues: "It is no exaggeration to say that, for the five years previous to July 1889, the ordinary Tribunals did not deal at all with the most important cases of crime which occurred in the country. The civil Tribunals were practically superseded by the Commissioners of Brigandage. In other words, an elaborate and highly civilised system of justice existed in appearance, whereas in reality, for all practical purposes, no such system existed at all in respect to criminal justice. . . ." The proceedings of the Commission of Brigandage "were often of the most arbitrary and illegal description. Torture has been frequently employed to extract confessions. Many persons have been convicted on very insufficient evidence, and it is scarcely possible to doubt that some of these at least are innocent of the crimes for which they have been condemned. In fact, many of the worst abuses of the past have been reproduced." In reference to his second criticism, Lord Cromer writes: "The

to the Ministry of Justice was suggested, but a very flagrant case in which the Native Court of Appeal acquitted an Egyptian magistrate, who had been guilty of resorting to torture, proved that this would not be sufficient. "All this tends to show that the Native Court of Appeal ought to be so strengthened by the introduction of English, or, at all events, of European material, as to exclude any chance of such timidity perverting the course of criminal justice, at any rate on appeal."[1] "I think the nomination of two more European Judges to the Court of Appeal indispensable . . . Mr. Scott urges, and, I think, with great reason, that it is impossible that the Courts should work well until some of the native Judges, who are notoriously incompetent, are removed, and other more capable Egyptians appointed in their places. I believe there are about eight Judges who ought to be removed."[2] Mr. Scott was appointed Judicial Adviser by the Decree of 15th February 1891. His position is thus described by Lord Cromer: He "will not be entitled to a seat at the Council of Ministers, but it is understood that the Minister of Justice will keep him informed of all matters of importance affecting his Department, and that he will take no important step without previous consultation and agreement with Mr. Scott; further, whenever any judicial question may be before the Council of Ministers, the President of the Council may, if he thinks fit, request Mr. Scott's presence at the Council in order that he may afford to the Ministers his explanations and advice."[3] At the same time a Committee of Inspection was appointed, consisting of the Judicial Adviser, one of the Khedivial Counsellors, and the Procureur-Général, its duty being "de surveiller la marche, en général, du service des Tribunaux de Première Instance et des Délégations, et de faire, à ce sujet, des Rapports au Ministre de la Justice en lui signalant les irrégularités qu'il aura relevées."[4]

root of the whole evil is that the system of criminal procedure is radically faulty, neither can any solid nor permanent improvement in the present state of affairs be anticipated, unless it be reformed and brought to a greater degree than at present in harmony with the requirements of the country."

[1] Despatch of Sir E. Baring, 20th October 1890.

[2] Despatch of Sir E. Baring, 16th January 1891.

[3] Despatch of Sir E. Baring, 13th February 1891. The appointment of a Judicial Adviser led to the resignation of Riyaz Pasha, who was then Prime Minister, and who was opposed to the subjection of the Native Courts to the supervision of Europeans.

[4] Decree of 16th February 1891. "Comité de surveillance judiciaire."

We have dwelt very fully on the shortcomings of the Native Courts, but this has been done to show the great difficulties with which the new adviser had to contend, and also to show how impossible it would then have been to suggest any increase of their competence as in relation to the Mixed Courts. Since 1891 there has been progressive improvement in the administration of justice; and within three years of his appointment the new adviser was able to report that the administration was showing signs of improvement, and that the incompetent leven had been removed from the Bench, the *personnel* of which had in other ways been greatly improved. The most important reform introduced by Mr. Scott was a system of Summary Courts, having competence in both civil and criminal matters. Sir Malcolm M'Ilwraith has, since his appointment in 1898, been able to carry on the improvements so successfully inaugurated by his predecessor. The Summary Court system has been continued, and even developed by the introduction of a system of Markaz Courts in 1904, a Markaz being a subdivision of a Moudiriah or province. New codes of Criminal Law and Criminal Procedure came into force on 15th April 1904; the right of appeal in criminal cases was abolished, and a system of Assize or Circuit Courts was introduced, thereby greatly diminishing the time occupied in the trial of a penal case. The improvement has thus been considerable, "but every one who is impartial, or in the least degree acquainted with the past and present circumstances of Egypt, will agree that too much should not as yet be expected from its Native Courts of Justice. The atmosphere of Egypt in all time past has been unfavourable to independence, or to purity; right has bowed its head to might; favour has smiled on the pliant; and honesty has gone empty away. These habits of mind are not changed in the course of a decade or two like a system of canalization. Then there are difficulties of administration."[1] "The presence of a few high-minded Europeans" is as necessary now as it was in the time when Lord Dufferin wrote. These European Judges have to administer a law which is very different to that to which they are accustomed, and they must do so in a foreign language; nor is their situation made easier by the fact that their court has to perform its duties alongside of two such important rivals as the Mixed Courts and the

[1] Sir Auckland Colvin, "The Expansion of Modern Egypt," p. 293.

Mehkemah Shariah. As an indication of the great improvement in the Native Courts of recent years it is interesting to read the following remark made by one of the Khedivial Counsellors in an Appendix to Lord Cromer's Report of 1904: "It is, at present, a serious inconvenience for a European in Upper Egypt that he cannot recover a small debt without bringing an action in Cairo. Already there is considerable evidence of a tendency to turn the difficulty by means of fictitious transfers to local subjects, and to use the Native Tribunals on the spot for the collection of such debts." [1] The adoption in favour of the Native Courts of the very practice which was once followed in order to escape their jurisdiction.

The competence of the Native Courts, as at present constituted, extends to all civil and commercial cases which may arise between natives, even in reference to immovable property; all civil and commercial cases between the State and private individuals who are native subjects, even in reference to immovable property; all civil actions brought by a native subject against the State on account of any administrative measure which has interfered with a right recognised by law; and generally to all cases which may be attributed to it specially by any law or decree. These courts are expressly stated to be incompetent in reference to questions referring to—the Public Debt, the assessment of taxes, the establishment of wakfs, and to questions of personal statute; nor can they interpret the decision given in relation to questions of personal statute by the competent judge. In penal matters the Native Courts are competent to try any native subject who may have committed any crime, delict, or police contravention, and it does not matter what the nationality of the party may be against whom the act was directed.[2]

[1] Egypt, No. 1, 1905, p. 95.

[2] In reference to criminal offences directed against members of the Army of Occupation an exceptional tribunal may be called into existence. In principle the ordinary criminal law would be put in action to punish offences committed against members of the Army of Occupation; but a discretionary power is left to the General Officer in command, and the British Diplomatic Representative in Egypt, to apply to the Egyptian Government for the appointment of a special tribunal if they consider that the circumstances require this. The Decree establishing this exceptional procedure was promulgated on 25th February 1895, and refers to "crimes and delicts committed by natives against officers and men of the army of occupation, or against naval officers or sailors belonging to British ships of war stationed in Egyptian ports." The court is to consist of the Minister of Justice, as President, the Judicial Adviser, an English Judge of the Native Court of Appeal chosen by the Minister of Justice, the officiating

The division of the Native Courts for the trial of civil and commercial cases is into Summary Courts, Courts of First Instance, and an Appeal Court. Summary Courts[1] are established within the jurisdiction of each Court of First Instance, each comprising one or more Markaz, according to what is found necessary. The court is presided over by a Judge delegated from the Bench of the Court of First Instance of the district. Its first duty is to prevent litigation, as far as possible, by conciliating the parties; its competence extends to all civil and commercial cases, even in reference to immovable estate, where the value in dispute is less than 2000 piastres, and in these cases there is no appeal, or where the value is less than 10,000 piastres, when there may be an appeal to the First Instance Court of the district.[2] Certain special cases may also be placed within the competence of these Summary Courts, and parties may, within the limits allowed by the law, voluntarily submit their differences to them. There are seven Courts of First Instance,[3] in which a Bench of three Judges sits to hear civil and commercial cases. Their competence extends in appeal to all cases coming from the Summary Courts, and in First Instance to all cases not within the competence of the Summary Courts. The Court of Appeal is situated at Cairo, and has at present a Bench of twenty-two Judges, including the President, who is a native, and the Vice-President, who is an Englishman; it has competence in all appeals from the Courts of First Instance. Arabic is the official language of the Native Courts, and pleading in a foreign language is not allowed, but written conclusions in a foreign language are permitted if they are accompanied by an Arabic translation. All the Judges are appointed by

Judge Advocate of the Army of Occupation, and the President of the Native Court of Cairo or Alexandria. The procedure of the court is to be based on the Native codes; but very wide powers of punishment are conferred on it, including capital punishment—Ministry of Justice Recueil, p. 466. See also White Book on the Denshawai Affair (Egypt, No. 3, 1906), where Lord Cromer refers to the origin of the court, and where he says: "Since its creation, the Tribunal has only been called into existence twice, namely, once in 1897, and again in connection with the recent affair at Denshawai" (p. 24).

[1] Decree, 30th Nov. 1890, amended by Decrees of 31st August 1892, 7th December 1892, 26th June 1895. Civil jurisdiction is now being given to the Markaz Courts.

[2] They have also competence, similar to that of the Mixed Courts, in reference to leases, &c.

[3] At Cairo, Alexandria, Zagazig, Tantah, Beni Suef, Kena and Assiut, there is now an English Judge on the Bench of all these courts. For circumscription of the different courts see Decree, 13th February 1904, modifying the Decree of 14th June 1883.

Khedivial Decree; the Judges of the Court of Appeal are irremovable, but those of First Instance may be dismissed by the Khedive on the recommendation of the Minister of Justice.

The Native Courts were originally divided, for the trial of penal offences, into Contraventional, Correctional and Criminal Courts, but this system has been modified by the institution of Markaz[1] and Assize[2] Courts. Originally the Contraventional Courts tried all contraventions, that is, all offences punishable by imprisonment not exceeding one week or by fine not exceeding £E.1: now their jurisdiction is, in regard to certain contraventions, only concurrent with the Markaz Courts, while in others the Markaz Courts have acquired exclusive competence. The Contraventional Court is presided over by the Summary Judge of the district. The Correctional Courts had jurisdiction in regard to all delicts, but now, in regard to certain delicts, their competence is concurrent with the Markaz Courts. The Correctional Court is simply the Summary Court. By the Markaz Law of 1904, modified by the Law of 1907, power is given to the Minister of Justice, in accord with the Minister of the Interior, to issue Ministerial Orders establishing courts, called Markaz Courts; their competence extends to all contraventions and to the delicts mentioned in the annex of the Law, but their power to punish these delicts is limited to the infliction of a maximum fine of £E.10 or of three months' imprisonment, whatever the Penal Code may provide as the maximum. In Cairo and Alexandria a court called the Contraventional Court still exists, having competence, to the exclusion of the other Summary Courts, in all contraventions committed in these towns; but in all other cases the Contraventional Court is simply the Summary Court of the district. Thus, in practice, the Summary and Markaz Courts have succeeded to the position of the old Contraventional and Correctional Courts. The Court of First Instance is competent in appeal from these Courts.

Competence in regard to all crimes was originally within the jurisdiction of the Courts of First Instance with an appeal to the Court of Appeal at Cairo; but it was found that this system worked very unsatisfactorily,[3] and a system of Assize Courts was introduced in Lower Egypt in January 1905, and extended to Upper Egypt in

[1] Decree, 14th February 1904, modified by Decree, 2nd May 1907.

[2] Decree, 14th January 1905.

[3] See the Judicial Adviser's Reports for 1903 and 1904.

November of that year. There are two principal steps in the procedure for the trial of a crime before the Assize Courts: first, the procedure of examination by the examining magistrate; and, secondly, the hearing of the case by the Judges of the Court of Assize. The examining magistrate is specially delegated by the Minister of Justice from among the Judges of the First Instance Court of the district. Before the Parquet can prosecute a person for crime they must submit the whole facts to the consideration of the examining magistrate of the district where the supposed offence would be tried. There are four courses which may be taken by this magistrate: he may decide that the facts, even if true, do not constitute any penal offence, he therefore dismisses the case; or he may consider that, if the facts alleged are true, an offence has been committed, but that the offence does not constitute a crime, and so he instructs the Parquet to bring the case before the Court competent; or he may consider the evidence insufficient and order a further inquiry; or, lastly, he may consider that the alleged facts constitute *primâ facie* evidence of a crime, in which case he commits the accused for trial by the Assize Courts. The committal order must set forth the facts on which the charge is based, the name of the offence of which the party is accused, and the facts which constitute the elements of this offence. The case is brought before the Assize Courts when they next appear in the district, every locality which has a Court of First Instance being visited by the Assize Court monthly. The Assize Court consists of three Judges of the Court of Appeal expressly delegated for the purpose. Since the institution of the Assize Courts there is no appeal in criminal cases, but there is a right to demand a review by the Cassation Court, which is simply a chamber of the Court of Appeal sitting specially for the purpose of cassation. This review is only allowed where there has been a misapplication of the law, or where there has been a fault in the procedure or sentence sufficient to render the case null, or where the facts proved are not punishable by the law.[1] Special Children's Courts were instituted in Cairo and Alexandria in the year 1905, to try all contraventions and delicts committed by children. The Courts are presided over by a Judge specially delegated for the purpose. Crimes committed by children are tried by the Assize Courts.

The duties of prosecuting before the Egyptian Penal Courts are

[1] Code of Criminal Instruction, Article 229, &c.

undertaken by a State department called the Parquet.[1] The head of this department is the Procureur-Général, who is assisted by the Advocate-General, Deputies or Substituts de Parquet, and Substituts-Adjoints. The Procureur-Général is the supreme head of the department, and as such exercises, either personally or by his deputies, the right of bringing the public action for a penal offence. He has also duties in reference to disciplinary actions, supervision of places of detention, and the care of certain public funds.[2] The Advocate-General is the deputy of the Procureur-Général, and fills his place in his absence. He sits only in the name and under the authority of the Procureur-Général, and is subordinate to him. In each district there are a number of Deputies or Substituts de Parquet, at the head of each district being a Chef de Parquet, who is directly responsible for his district to the Procureur-Général, and who reports to him. He has power to initiate proceedings in his own name before the courts of his district, and present appeals before the Courts of First Instance. The deputies have authority to initiate proceedings in their own names, but are considered as prosecuting under the orders of their Chef de Parquet. The Substituts-Adjoints have no authority to initiate proceedings in their own names. The Parquet is looked upon as being one and indivisible, in the sense that each of its members, in the exercise of his duty, represents the department itself in such a way that it is not necessary that the same member should assist at all the stages of the same case, and that what is done by one member has the same effect as if it had been done by another, provided that it does not exceed the limits of their respective competence. The members of the Parquet are all removable, and are under the control of their hierarchial chiefs and the Minister of Justice.[3]

Although the Egyptian Courts are modelled upon the French system, there are, generally speaking, no Administrative Courts in the sense in which such courts exist in France. The explanation of this is given in Lord Dufferin's Report of 1883: "A further question of some difficulty connected with this subject (native justice) has also

[1] "No prosecution can be instituted for the infliction of punishment except by the members of the department of public prosecutions."—Code of Criminal Instruction, Article 2.

[2] Decree for the Reorganisation of the Native Courts, Articles 60-64.

[3] *Ibid.*, Article 65.

been occupying the attention of the Khedive's Government, namely, that of what in France is called 'Administrative Justice.' At first there was an inclination to constitute a separate Court for the adjudication of all actions brought by individuals against officials; but I am happy to say this idea has been abandoned, and it is now settled that all public functionaries shall be amenable to the ordinary Tribunals for any act committed in violation of any Law, Decree, or Regulation, and that every case in which the position of the State is analogous to that of a private person, whether as proprietor, seller, buyer, tenant, creditor or debtor, will be dealt with by the ordinary Tribunals." The Règlement d'organisation judiciaire of the Mixed Courts, and the Decree reorganising the Native Courts, each provide that such cases shall be tried by the ordinary Court competent to try a similar case between two private persons; in consequence, if a foreigner either sues, or is sued by, the Government, the Mixed Courts are competent, while if the party suing, or sued by, the Government is a native, the Native Courts are competent.[1] There are, however, a few exceptional cases in which an Administrative Court has jurisdiction in Egypt, thus: offences against the Customs Laws are tried by a special court, consisting of certain officials of Customs Department; more serious offences committed by Omdahs, such as contraventions against the Canal Law, the Locust Decree and the Agricultural Roads Decree, are tried by a Commission—the Provincial or Omdah's Commission—consisting of the Mudir of the province, a delegate from the Ministry of Interior, four Omdahs and a Substitut de Parquet, convictions have, however, to be submitted to the Ministry of Interior. There are also special Administrative Commissions for enforcing the Canal Laws and the Corvée Law.[2]

[1] A reserve should be made in reference to such administrations as are considered "Egyptian" and not "Native." In regard to these the theory of mixed interest applies, and the Court competent would, in consequence, be the Mixed Court.

[2] Offences against the Canal Law, and acts of obstructing, polluting water, or damaging waterworks, are dealt with by a Commission consisting of the Mudir, the chief engineer of the district, and three notables; appeals being heard by a Commission consisting of the Under-Secretary of State for the Interior, a Khedivial Counsellor, and a delegate of the Public Works Department.

The Corvée Commission is presided over by the Mamour of the Markaz, appeals being heard by the Mudir of the province and four Omdahs.

The Special Corvée Commission, that is for enforcing the regulations of the Corvée Law when special precautions have to be taken to guard the Nile banks, and additional forced labour is required, consists of the Mudir, the

To state again the present position of the privilege of jurisdiction. The competence of the Consular Courts in Egypt has been greatly modified in favour of the Mixed Courts instituted in 1876. The Consular Courts are, however, still competent in all questions of personal statute, in civil and commercial cases, except when they are in reference to immovable property, where both parties are of the same nationality, and in all cases where one of their nationals is accused of a crime or delict. The Mixed Courts are competent: first, in all civil and commercial cases between foreigners of different nationalities, or between foreigners and natives; secondly, in all civil cases between foreigners of the same nationality, when the dispute is in reference to immovable property; thirdly, in a certain limited number of cases of delict and crime of a special character, whether committed by foreigners or natives; and, lastly, in all cases of contraventions of police regulations committed by foreigners.

chief engineer of the district, the Mamour and two Omdahs; and appeals are heard by a Commission presided over by the Minister of Interior, or the Under-Secretary of State for the Interior.

CHAPTER XVI

COURTS OF PERSONAL STATUTE AND RELIGIOUS COMMUNITIES

All questions of Personal Statute are outside the competence of the Mixed Courts: "Les questions relatives à l'état et à la capacité des personnes et au statut matrimonial, aux droits de succession naturelle ou testamentaire, aux tutelles et curatelles, restent de la compétence du juge du statut personnel. Lorsque, dans une instance, une exception de cette nature sera soulevée, si les tribunaux reconnaissent la nécessité de faire statuer au préalable sur l'exception, ils devront surseoir au jugement du fond et fixer un délai dans lequel la partie contre laquelle la question préjudicielle aura été soulevée, devra la faire juger définitivement par le juge compétent. Si cette nécessité n'est pas reconnue, il sera passé outre au jugement du fond."[1] The Native Courts are similarly incompetent in such cases: "Ils ne pourront non plus connaître des contestations relatives à la constitution des wakfs, aux mariages et autres questions qui s'y rapportent telles que: la dot, la pension, &c., aux donations, legs, successions et toutes autres questions du statut personnel. Ils ne pourront interpréter les décisions rendues en ces matières par le juge compétent."[2] "Les successions sont réglées d'après le statut personnel du défunt. Toutefois, le droit de succession à l'usufruit des biens wakfs, est réglé d'après la loi locale."[3] "La capacité de tester et la forme du testament sont également réglées d'après le statut personnel du testateur."[4] "La capacité relative ou absolue est réglée par le statut personnel de la personne qui contracte."[5] From these articles we gather that all questions of marriage, including capacity to marry, the formalities of marriage, the rights and duties of husband and wife, the custody of children and the dissolution of marriage, questions

[1] Mixed Civil Code, Article 4.

[2] Decree for the Reorganisation of the Native Courts, Article 16.

[3] Native Civil Code, Article 54; also Mixed Civil Code, Article 77.

[4] Native Civil Code, Article 55; also Mixed Civil Code, Article 78.

[5] Native Civil Code, Article 130; see also the Mixed Code, Article 190.

as to adoption, the legitimacy or illegitimacy of children, and the recognition of natural children; all questions of capacity to perform a juristic act and questions of tutory, curatory and interdiction; all questions as to gifts, wills and successions *ab intestato*—that all such questions are outside the competence of either the Mixed or Native Courts, and that if a defence is raised which is based on a question of this nature, the case should be adjourned until the Court of Personal Statute, competent to decide the matter, has given its decision; and, further, that "this decision is not subject to interpretation." The Personal Court competent depends, in the first place, on the nationality of the party interested. If the party is a foreigner, his Consular Court is competent, and the law of his own country is applied; if, however, the party interested is a native, the court competent will depend upon the religion of the party, that is to say, the court of his religious community will be competent, and the law applied will be his religious law. The jurisdiction of the Consular Courts in regard to questions of personal statute requires no further discussion. We will consider shortly the constitution, first, of the Moslem Courts, and afterwards those of the non-Moslem Communities.

The Mohammedan Courts in Egypt are the Mehkemah Shariah and the Meglis-el-Hasby. They have both been reformed by recent Decrees. The Mehkemahs were reorganised by a Decree of 27th May 1897, in virtue of which three grades of courts were instituted: the District Courts, the Courts of the Moudiriahs or Governorates, and the Supreme Court of Cairo. Each District Court is presided over by a single judge. The Court of the Moudiriah consists of the Kadi and Mufti of the Moudiriah, and an assistant judge. There are slight modifications for the Governorates of Cairo and Alexandria. The Supreme Court of five members is composed of the Grand Kadi, the Grand Mufti, and three members appointed by the Khedive on the nomination of the Ministry of Justice. The competence of the district Mehkemah is, first, in reference to all questions arising out of marriage, such as dowry, Hadanah or the custody of children by a mother to a certain age, repudiation, divorce, dissolution of marriage, and "other questions relative to marriage;" seeondly, questions of succession, provided the value of the deceased's estate does not exceed £E.25. The Mehkemah of the Moudiriah is competent, firstly, to hear appeals from the District Court, and, secondly, to consider questions relating to affiliation, death, wakfs, and successions of a

value greater than £E.25. The Supreme Mehkemah acts as a Court of Appeal in cases decided by the Moudiriah Courts. The Mehkemah also exercise important duties in reference to registration of titles.

The Decree of 19th November 1896 suppressed the Beit-el-Mal, and instituted a new system of Councils, each called Meglis-el-Hasby, having competence in reference to the nomination, confirmation, and dismissal of tutors; the continuance of tutory beyond eighteen years of age; interdiction, the nomination and dismissal of curators, and the removal of interdiction; the nomination or dismissal of agents for persons who are absent; the supervision of the gestion of tutors, curators, or agents of absentees, and the examination of their accounts; as well as all measures necessary to be taken to safeguard the interests of minors, incapables, or absentees. A Meglis-el-Hasby is instituted in each Markaz, consisting of the Mamour of the Markaz, who is President, a Ulema of the Markaz appointed by the Ministry of Justice, and a notable appointed by the Mudir. There is also a Meglis-el-Hasby in each Moudiriah and Governorate, consisting of the Mudir or Governor as President, a Ulema of the Moudiriah appointed by the Ministry of Justice, a notable of the district chosen by the Ministry of Interior, and a member of the family interested. Appeals from the Meglis-el-Hasby are brought before the Native Court of Appeal at Cairo.

These Mohammedan Courts are, unfortunately, very far from the standard which could be desired, and the Reports of the Judicial Adviser have year by year called the attention of the Government to deficiencies. Some reform has been introduced, but the most essential reforms must necessarily be the result of the action of the Moslem community itself. In 1898 the Judicial Adviser called the attention of the Government to the condition of the archives of the Mehkemah. His remarks will help to give an idea of the root and branch nature of the reforms necessary: "Piles of crumbling, mildewed documents, heaped up in every corner of the room, apparently without any attempt at arrangement or classification. Numbers of these sacks of papers, many of which fell to pieces on being touched, have lain undisturbed in the same corner for centuries. Yet they are all title-deeds of more or less value, hodgets and wakfiehs, often of great importance to the parties interested. Such a thing as an index or a catalogue was inexistent, and it is difficult to under-

stand how any one could ever obtain a copy of a particular document concerning him." Another quotation from the same Report will show another very important question demanding reform: "The number of cases actually decided by the Grand Mehkemah of Cairo, to take this instance only, in the course of the year, in proportion to the number entered for trial, is startlingly small. The reason for this appears to be the extraordinary frequency with which cases are struck out of the list for reasons which in general do not transpire. The figures speak for themselves, and are indeed extremely remarkable. In 1898, 7409 cases were entered for trial before the summary chamber of the Grand Mehkemah. Of this number only 1751 actually proceeded to judgment, and no less than 4729 were struck out of the list for one reason or another. As regards the chamber of First Instance, the number of cases entered was 616, and the number actually tried was 9, 53 being rejected on technical grounds, 80 still left pending, and 483 struck out of the list!" Each annual report repeats the same or similar criticisms, and demands a radical reform; but, in spite of this, the Legislative Council, in 1903, accepted a motion that "nothing connected with the Mehkemah Shariah stands in any need of reform." Fortunately, however, a more reasonable view was taken of the matter by the same Council on the 6th April 1904, when they addressed a letter to the Council of Ministers, stating that the Mehkemahs required reform "by introducing into their regulations modifications of a nature to secure the efficiency of these Courts, the prompt disposal of their cases, and the disappearance of any grounds of complaint, whilst in no way departing from the provisions of the Sharia." Certain specific recommendations were also made:—(1) Improvement of the instruction given at the El-Azhar University to the Kadis and officials of the Mehkemah, and the institution of a system of examinations; (2) the appointment of a Commission of Hanafite Sheikhs to amend the procedure and codify the Sharia; (3) the preparation of regulations for the execution of Mehkemah decrees; and (4) an increase in the salaries for officials. Since then committees have been appointed to consider these different matters, and considerable progress has been made towards issuing a Code of Law referring to Mohammedan Personal Statute and Wakf; decrees are under consideration for reforms in procedure; and a committee has also drawn up regulations and a course of study for a proposed Training College for Kadis, the students of which are to be selected from the

students of the El-Azhar, and to be taught by Ulemas under the supervision of the Government.

The institution of non-Moslem Courts of Personal Statute dates back to the capture of Constantinople by Mohammed II. The policy of Mohammedan Law towards the Christian and Jewish inhabitants of a conquered territory was, as we have seen, more merciful than that adopted in relation to Pagans or Wattanee; the Christians and Jews upon submission became subjects, though on a lower grade, to the true Believer; since, although they preserved their personal liberty and property, and were free to worship according to the forms of their own belief, they were obliged to pay certain special taxes and submit to a number of regulations. Mohammed strictly observed these rules, and formed his non-Moslem subjects, or Rayah, into communities, each having their own legal and administrative officers, who were responsible to him for all the members of their community. Mohammed's policy of moderation was dictated by necessity. Constantinople had to be repeopled, and to do this the Christians and Jews required to be encouraged to return to the city and make it their permanent abode. Orders were issued to the provinces to send families to Constantinople, public works were started to attract workmen, and everything was done to conciliate the former Greek inhabitants.

In pursuance of his policy of conciliation Mohammed formed the Greeks into a community under a Patriarch, the members being granted full religious freedom and the application of their own laws. The policy is described by Gibbon:[1] "The throne of Mahomet was

[1] Gibbon, vol. vii. pp. 201-202. Another account of these events is given in a recent work ("The Destruction of the Greek Empire," by E. Pears, London, 1903, p. 383): "A record of the ecclesiastical affairs of the Orthodox Church, written within ten years after the capture, states that Mahomet, desiring to increase the number of the inhabitants of Constantinople, gave to the Christians permission to follow the customs of their Churches, and, having learned that they had no patriarch, ordered them to choose whom they would. He promised to accept their choice, and that the patriarch should enjoy very nearly the same privileges as his predecessors. A local synod having been called, George Scholarius was called, and became known as Gennadius. The Sultan received him at his seraglio, and with his own hands presented him with a valuable pastoral cross of silver and gold, saying to him, 'Be Patriarch and be at peace. Count upon our friendship as long as thou desirest it, and thou shalt enjoy all the privileges of thy predecessors.' After this interview the Sultan caused him to be mounted upon a richly caparisoned horse, and conducted to the Church of the Holy Apostles, which he presented

guarded by the numbers and fidelity of the Moslem subjects, but his rational policy aspired to collect the remnant of the Greeks; and they returned in crowds, as soon as they were assured of their lives, their liberties, and the free exercise of their religion. In the election and investiture of a patriarch the ceremonial of the Byzantine court was revived and imitated. With a mixture of satisfaction and horror they beheld the sultan on his throne, who delivered into the hands of Gennadius the crosier, or pastoral staff, the symbol of his ecclesiastical office; who conducted the patriarch to the gate of the seraglio, presented him with a horse richly caparisoned, and directed the vizirs and bashaws to lead him to the place which had been allotted for his residence." The Armenian Christians were treated in a similar manner; their Church had been founded about the year 300, but had definitely separated from the other Christian Churches in the fifth century. The Armenian Bishop at Broussa was ordered to come to Constantinople with as many Armenian families as possible, and settle there. On his arrival he was made Patriarch, and was given administrative and judicial powers over the un-Orthodox Christians, similar to those granted to Gennadius over the Greek Orthodox Church, while the members of the community were granted the same privileges as had been conceded to the Greeks. Similarly Jews were attracted to Constantinople, and formed into a community with similar rights under a Grand Rabbi exercising similar powers. Thus were formed, within a very short time after the capture of Constantinople, three non-Moslem communities, the members of which enjoyed certain rights of independence, and were subject to their own religious authorities.

The following quotation, which describes the position of the Greek Church as a result of the grant of these privileges, is of interest[1]: "Strange as it may seem, the immediate result of the Mussulman domination was beneficial to the Church, in as far as her prosperity can be separated from that of the whole Christian

to him as the church of the patriarchate as it had formerly been. After the election of Gennadius, the sultan, according to Aristobolus, continued his intercourse with the new patriarch, and discussed with him questions relating to Christianity, urging him to speak his mind freely. Mahomet even paid him visits and took with him the most learned men whom he had persuaded to be present at his court."

[1] "Turkey in Europe," Sir C. Eliot, London, 1900, pp. 266-267.

population. . . . The Emperor had always been head of the Church, and, in virtue of his sacrosanct character, had interfered in and controlled the course of ecclesiastical policy. A Mohammedan sovereign had no such ambitions. While reserving a full right to hang or otherwise correct any troublesome priest, Mohammed put the whole, 'Greek religion,' as he phrased it, under the control of the Patriarch, who thus acquired an almost Papal authority, which he had never enjoyed in Christian times. Further, the peculiarities of Mohammedanism tended to exalt the position of the Patriarch. Islam has never clearly distinguished between the Church and the State, between religion and law, between temporalities and spiritualities. By tolerating the Christian religion the Conqueror implied that Christians were allowed to preserve not only their religion in the strict sense of the word, but all their observances, usages, and customs, provided they clearly understood that they were, collectively and individually, the inferiors of Moslims, and paid tribute in humble gratitude for the privilege of being allowed to exist. The Patriarch was the head, not only of the Church, but of this tributary community, the representative of the Greek nation, the recognised intermediary between them and the Ottoman Government, a chief empowered to settle all disputes and other business matters arising between Christians, provided no Moslim was concerned. All questions respecting marriage and inheritance were referred to the ecclesiastical tribunals, and as the Greeks were unwilling to go before Turkish Courts, and the Turks cared little how Christians settled matters among themselves, the authority and jurisdiction of the Patriarch gradually extended to all civil cases. He was allowed to levy tithes and dues from his flock, and to keep Zapties in his service. . . . The higher clergy found themselves possessed of a power and influence which were new to them, while the peculiar inaptitude of the Turks for commerce and money making enabled the laity, especially in the capital, to amass enormous fortunes."

The position, however, of a Christian Church assisting a Moslem ruler to oppress Christians was essentially a false one, and the natural consequences of deeper degradation were not long in following. Within fifty years of the conquest the office of Patriarch was bought and sold for a price; the successful Patriarch reimbursing himself from the money received from his subordinate

officials on their appointment. Nor did the Community always retain the good favour of the Government: thus in 1520 the Sultan Selim I. threatened to convert by force all Christians to the Mohammedan religion, while Murad III. threatened to turn all churches into mosques. The Churches' troubles were not only with the Moslems; the Latins, backed by France, were rapidly increasing in power, and usually sided against the Orthodox Christians. In 1700 Russia for the first time intervened in favour of the Orthodox Church, and from that date throughout the eighteenth century the Orthodox Patriarch was invariably supported by Russia. During the nineteenth century we find the Christians more and more divided into different religious communities; but after the Hatti Humayoun the older constitutions were modified, and new constitutions granted on more democratic lines; while the distinctions which had arisen within the original communities were recognised, and new communities formed, each with its own separate constitution and hierarchy of authorities.

The second Community recognised by Mohammed the conqueror had been the Armenian Community, whose Patriarch was given authority over all other Christians not included in the Orthodox Church. All Armenians, however, were not of the same faith. From the time of the Crusades, when many Latin Churches were founded in the Levant, a certain number of Armenians had been Catholics. Thus the Armenian Church has been from early times divided into two sects: the first, being also very much the larger, was called the Armenian Gregorian Church, the other the Armenian Catholic Church. The Armenian Gregorians are sometimes called the Armenian Orthodox Church, but this is misleading, as the Armenian Church is not strictly Orthodox; since, not only was it not represented at the Council of Chalcedon, but other points of distinction exist between it and the Orthodox Church, although there are also points of resemblance, such as the division of their ecclesiastics into the ordinary clergy who marry, and the monks who do not. The consequences of the division were clear during the Armenian massacres of 1895-96, when only Gregorians were killed, and when the Orthodox Patriarch and the Russian people looked on with indifference.[1] The Catholicos of Etchmiazin is the true head of

[1] See "Turkey in Europe," pp. 428, 432, 451, &c.

the Gregorian Church, but the Church is represented in its dealings with the Porte by the Patriarch of Constantinople, who is the head of the Community in the Ottoman Empire. There are twenty-four dioceses outside the Ottoman Empire, and forty-four, including Egypt, under the Patriarch at Constantinople.[1] The Armenian Catholics down to the nineteenth century were not recognised by the Porte, but were looked upon as members of the Armenian Community under the Gregorian Patriarch. At the commencement of the century they formed a numerous and prosperous body at Constantinople, and after the crisis of 1828, by the aid of the French Government, they obtained recognition as a separate community under a Patriarch.[2] Under this Patriarch of the new Armenian Catholic Church were united the four other sects who were connected with Rome—the Maronites, the Melchites, the Syrians and the Chaldeans. In 1840, however, the Syrians and the Melchites obtained a Firman authorising them to inscribe themselves at the Chancery of the Latin Rayahs; and about the same time the Maronite Community obtained for itself the recognition of a special representative at Constantinople, and so escaped the protection of the Armenian Patriarch.[3]

In reference to the Latin Christians, those of them who were resident at Constantinople after the conquest became Zimmee, but, owing to their particular Western characteristics, they received special treatment, which was complicated and strengthened by the protection they received from foreign Powers. After the conquest the Latin colonies concentrated at Pera, which was then a Genoese town practically independent of the Greek city. In recognition of its neutrality during the siege Mohammed granted it certain civil and religious privileges, appointing a delegation of notables and ecclesiastics, who in time became a municipality, for this Latin quarter of the city, and which was called the "Magnifica Comunita di Pera." Affairs arising between this Community and the Porte were placed in the hands of the Chancery of the Latins, the Chancellor being called Wekil of the Latin Community.[4] Other Chanceries were founded in other parts of the Ottoman Empire under the direction of that of

[1] Young, vol. ii. pp. 75, 76.

[2] Originally called Bishop in first nomination, 1831, but Patriarch in 1834.

[3] See Young, vol. ii. p. 113.

[4] Young, vol. ii. pp. 122-126. It was in favour of the Comunita that the English and Austrian Ambassadors intervened in 1793, in order to obtain the Church of St. Benoît. They were, however, unsuccessful.

Constantinople. The Communita, however, disappeared during the period of the Revolution.

The Jews received very much better treatment from the Ottoman Sultans than that which they received from other European rulers during the fifteenth and sixteenth centuries. Before the capture of Constantinople the Ottoman armies found wherever they went Jewish communities which welcomed them. Thus Orcan encouraged the Jews to come to his capital Broussa, giving them a synagogue, granting them a quarter, and allowing them to own land and house property, provided they paid the Kharadj tax. On the invasion of Europe the Grand Rabbi of Adrianople was given full authority over all the Jews in Roumelia, having the right of jurisdiction over them and the duty of collecting the taxes from them. Mohammed II. thus followed the precedent of former Sultans when he formed a Jewish Community at Constantinople, and granted wide judicial and administrative powers to the Grand Rabbi. Jews persecuted in Germany and Spain flocked to Constantinople. The Sultan Suleyman appointed a lay chief or "Kapou Kethonda" to share the duties of the Grand Rabbi. At first this not unnaturally caused a conflict, but after a time the lay official became subordinate to his spiritual head. Down to the eighteenth century the Jewish Community enjoyed special privileges, and many of their members held important official positions; but after the year 1700 they lost favour, and were submitted to regulations as to dress, and, losing office, they were robbed and ill-treated by the Viziers, Pashas and Janissaries. Many emigrated from the country. With the fall of the Janissaries in 1828 the position of the Jews improved in like manner to that of the Christians; but although they received the same privileges as the other Rayah, they never again enjoyed the exceptional treatment which had formerly been accorded them.[1]

The period of the Tanzmiat was not without its effect on the position of the non-Moslem communities. One of the chief objects of the reform was to establish greater equality between the Moslem and non-Moslem citizens, and guarantee the fundamental rights of the latter as fully as those of the former. The second article of the Hatti Humayoun[2] confirms the privileges enjoyed in former times: "Tous les privilèges et immunités spirituels, accordés ab antiquo,

[1] Young, vol. ii. pp. 139-145.

[2] Young, vol. ii. pp. 3-9.

de la part de mes ancêtres, et à des dates postérieures, à toutes les Communantés chrétiennes ou d'autres rites non-musulmans, établis dans mon Empire, sous mon égide protectrice, seront confirmés et maintenus." Article 3 undertakes that a commission shall be formed to consider the existing privileges of these communities, and place them in harmony with the existing state of affairs. In pursuance of this promise new constitutions were prepared and granted to the non-Moslem communities, the principal characteristic of the reforms being their increased democratic character. Speaking generally, each Community has a single official, who is generally an ecclesiastic, as its head. This official is called either Patriarch, Rabbi or Wekil; he is chosen by the Community, subject to the approval of the Porte, the appointment being confirmed by Berah. If the actual head of the religious body, to which the Community is attached, is resident in a foreign State, as the Pope or the Greek Catholicos, the Community must have someone to represent him in Turkey. Under the head of the Community are, as a rule, three councils: the first a spiritual council, consisting entirely of ecclesiastics and concerned with ecclesiastical matters; the second either lay, or partly lay and partly ecclesiastical, whose duty it is to consider lay questions; and, thirdly, a general assembly whose principal duty is the election of the Patriarch. Those Communities which are attached to the Roman Catholic Church have, as a fifth power, the Pope, who exercises certain rights of appeal and control. The privileges conferred on these authorities are partly administrative and partly judicial. They have perfect freedom, within the limits laid down in the interests of public order, in all that concerns their religious exercises, the administration of their churches, monasteries, schools and cemeteries, although special permission is always necessary, except in Egypt, before any foundation may be built or restored. They may teach in their own schools in their own language. They have exclusive judicial competence in all questions of worship and clerical discipline in reference to one of their own members; and all disputes arising out of personal statute between members of their Community are, in principle, within their competence; although certain exceptions, for instance, in reference to successions, have been made in favour of the Moslem Courts. These decisions, when properly given, are executed by the Moslem administrative authorities. In Turkey, also, the authorities of these communities keep the registers of deaths, births

and marriages; and collect the taxes due from the members of their Community.

The religious communities in Egypt are the Greek Orthodox Community, the Armenian Gregorians, the Jacobite or Orthodox Copts, the Greek Catholic Community or Melkites, the Armenian Catholics, the Coptic Catholics, the Maronites, the Syrian Catholics, the Catholic Chaldean Community, the Protestant Community and the Jewish Community. The Greek Orthodox Community is by far the most fully developed and the most important of the Ottoman communities; a constitution was granted to it in 1860. This constitution provides for a General Assembly consisting of lay and ecclesiastical members, its duty being to elect the Patriarch,[1] who is chosen from among the bishops; a Synod or Ecclesiastical Council, consisting of the Metropolitans and the principal bishops presided over by the Patriarch, its duties referring to all the purely religious affairs of the Community and disputes between members of the Community in reference to the more religious parts of personal statute, such as questions in relation to marriage and divorce; and a Mixed Council, consisting partly of lay members and partly of ecclesiastics, the former being in a majority and being elected by delegates from the provinces; its duties include the administration of all the temporal affairs of the Community, and the settlement of the less religious questions of personal statute which may arise between members. The judicial system is fully developed. In the first place, there are two sets of courts existing side by side, the one attached to the Ecclesiastical Council, the second to the Mixed Council; and, in the second place, there is an arrangement of Provincial Courts and Courts of First Instance and Appeal; the Patriarch is the final court of appeal, but below him the Ecclesiastical Council is the court of appeal in the more religious cases, and the Mixed Council in the others. The law applied is based for the most part on the Roman Law of Justinian, as modified by custom and ecclesiastical ordinances of the Eastern Church.[2]

The Constitution of the Gregorian Community[3] was granted on 24th May 1860. It provides for a Patriarch, an Ecclesiastical Council, a Lay Council and a General Assembly. The General Assembly

[1] The election of the Patriarch of Alexandria is regulated by a Réglement of 24th November 1899.

[2] Young, vol. ii. pp. 12-34.

[3] *Ibid.* 79-92.

consists of 140 delegates, of whom 20 are ecclesiastics chosen by the clergy at Constantinople, 40 are chosen by the provinces, and 80 by the inhabitants of Constantinople. Its duties are electoral and administrative; it elects the Patriarchs as well as the members of the Ecclesiastical and Lay Councils; it also controls the administration of the affairs of the Community, meeting for this purpose once every two years to consider the reports as to the administration, to examine the budget and fix the taxes; it may also be convoked for special meetings, to transact any extraordinary business which may arise in the interim, such as to decide disputes arising between the different councils, or to elect the Catholicos or one of the Patriarchs. The Ecclesiastical Council consists of 14 members, and has duties similar to the Synod of the Orthodox Community. The Lay Council consists of 20 lay members elected by the General Assembly for a period of two years, and transacts all the general administrative business of the Community, appointing for this purpose four commissions: one for the Schools, one for Justice, one for Finance and another for the Monasteries. The Judicial Commission consists of 8 members, 4 clerical and 4 lay, its duties being to decide all cases of personal statute between members of the Community, there being an appeal either to the Ecclesiastical or Lay Council, according to the nature of the dispute.

The Orthodox Copts are an essentially Egyptian Community, and their Constitution is contained in two Decrees of 2nd March 1883 and 14th May 1883, granted by the Khedive.[1] There is a General Assembly, which meets for electoral purposes, and which must consist of at least 150 members; a General Council of 12 members nominated by the Khedive, and 12 elected by the General Assembly, the duration of the mandate in each case being for five years: the Patriarch presides. The duties of the Council refer to all questions of wakf, charities, schools, churches, the poor, and to printing presses. The schools are, however, under the supervision of the Ministry of Public Instruction. The Council has also judicial duties in reference to disputes between Orthodox Copts. Sub-councils may be appointed in localities where the General Council may consider it convenient, with such powers as they may expressly delegate to them. There is also an Ecclesi-

[1] Gélat, 1894 edition, supplement, pp. 127 to 131. Alexandria, 10th April 1889, B. L. J., i. p. 101. Mixed Courts contest these Decrees as contrary to Hatti Humayoun. The decree granting a constitution to the Armenian Catholics of Egypt is in a similar position.

astical Council, under the presidency of the Patriarch, consisting of ecclesiastics, nominated by the Patriarch in agreement with the General Council; its duties refer to all religious questions. It may also be added to the General Council, if thought expedient, for the discussion of any question of personal statute; but its position is of very secondary importance.

The Catholic communities corresponding to these three communities are regulated on similar lines, subject to the control of the Pope, who confirms the election of the Patriarchs,[1] and who has a right to act as a final Court of Appeal, a right which has been confirmed by the Mixed Court of Appeal at Alexandria.[2] The Coptic Catholics have a Patriarch at Cairo, the Greek Catholics a Vicar, and the Armenian Catholics a Bishop.[3] The other Catholic communities have very little importance.

The Protestant Community is also an entirely Egyptian Community. The Protestants of the Ottoman Empire were organised into a Community in 1847, and in 1850 a Constitution was prepared for them by the Porte; but this was not accepted by the Community, and remains a dead letter.[4] However, a constitution was granted to the Protestants in Egypt by Khedivial Decree on 1st March 1902. The Egyptian Protestant Community had been officially recognised in Egypt as early as 1878, when a Wekil was appointed by Khedivial Ordinance; but everything was left in a very vague state, and, above all, there was no code of Personal Law recognised as applicable to Protestants as such. The majority of the Community belonged to the "United Presbyterian Church of Egypt," which is a Native Church connected with the American Presbyterian Mission. Its members had originally been, for the most part, Copts, and to overcome this last difficulty a Code of Personal Statute was prepared, based in principle on the Coptic Law, although the influence of Mohammedan Law is noticeable in the rules of succession. This code was not fully acceptable to the other Protestant Churches; so, when a constitution was granted to the Protestant Community, this code was modified in such a way as to be applicable to all Protestants to whatever special denomination they might

[1] See appointment of Patriarch to Greek Catholic Community.—Gélat, 1894, supplement, p. 132.

[2] Alexandria, 26th April 1894.—Clunet, 1895, pp. 697 and 994.

[3] The Armenian Catholics in Egypt were granted a constitution by Khedivial Decree, 18th November 1905.

[4] Young, ii. pp. 108 and 109.

belong. The Decree of 1902 provides for a General Council, consisting of delegates elected by the different Protestant Churches recognised as forming part of the Community. Only two Churches were thus recognised—the United Presbyterian Church and the Dutch Mission at Galioub. The former has twelve members on the Council, the latter only one. Any other Protestant Church is entitled to apply for recognition. The Council elects the Wekil, and his substitute the Naïb. The Wekil presides over the Council. The Council looks after the affairs of the Community, keeps a register of its members and a register of the marriages celebrated by its clergy; it has also judicial duties in reference to cases of personal statute, provided the parties are Protestant, with the limitation, however, that in questions arising upon an intestate succession, all parties must consent to the jurisdiction of the Council. The decisions of the Council are to be executed by the ordinary Egyptian administrative authorities.[1]

One interesting point which arises from a consideration of this Decree is the non-ecclesiastical nature of its administration. This is probably due, for the most part, to the natural characteristics of most Protestant Churches; but it should also be noticed that the policy of the Ottoman Government has for some time been to popularise the non-Moslem Councils. Another tendency of the Ottoman Government has been to greatly restrict the judicial powers of the non-Moslem Councils; this has been especially the case since the reforms introduced into the administration of Turkish Justice. Two Ottoman circulars are of interest in reference to this matter: the first is addressed to the Greek Orthodox Community, and the other to the Armenian Gregorians.[2] These circulars are neither in strict legal form, nor do they entirely agree with one another; and, moreover, they do not cover the whole question of personal statute. The principle, however, may be deduced that it is only the truly religious questions of personal statute which must be submitted to the councils of these communities, and questions arising out of succession, for example, should in principle

[1] The Ministry of Interior exercises important powers of supervision over the Community, and has to consent to all elections.

[2] Circular of the Sublime Porte to Orthodox Community, 3rd February 1891. Gélat, 1894, supplement, p. 121. Young, vol. ii. p. 19. Circular of the Sublime Porte to the Armenian Community, 1st April 1891. Gélat, 1894, supplement, p. 122. Young, vol. ii. p. 92.

be decided by the Moslem Courts, unless all parties consent to the jurisdiction of the Patriarch. It must be confessed that this suggested solution still leaves the situation very vague, and it would be desirable that it should be properly defined by the Government. There are certain questions where there can be little difficulty: thus, questions as to marriage and divorce would naturally be considered as coming within the exclusive competence of the Patriarch and his Councils. The same would apply to questions of paternity, the rights and duties of husband and wife, or of parent and child; but, on the other hand, the case is not so clear in reference to guardianship, since, in so far as it is concerned with the administration of property, there is no particular reason why it should be treated exclusively by the Patriarch, while, on the other hand, the care of the person of the ward and his education approach closely the relations of parent and child. In regard to successions, we have seen that the most recent non-Moslem Constitution has recognised the non-religious character of such cases, and yet the Community may have very vital interests in the disposal of the property of its members. Such as they are, these circulars have been adopted by the Egyptian Government as applying to all non-Moslem communities.[1]

The Jewish Constitution, which alone remains to be dealt with, provides for the administration of the Community by a Grand Rabbi, a Spiritual and a Lay Council, and a General Council. The General Council usually consists of 80 members, 60 of whom are elected by the inhabitants of Constantinople, and the other 20 are chosen from among the Rabbis by these 60 delegates. But for the purpose of electing the Grand Rabbi 40 additional members are added. These are representatives from the provinces, and for this purpose Egypt has special representation. The Spiritual Council consists of 7 Rabbis elected by the 80 ordinary members of the General Council, and the Lay Council of 9 members elected by the same body. The duties of these different bodies are much the same as in the case of the other communities. The communities of Cairo and Alexandria have special constitutions. In Alexandria the Jewish

[1] See Letter of the Cabinet of H. H. the Khedive to the Ministry of the Interior, 31st July 1891. Gélat, 1894, supplement, p. 125: "Ces dispositions doivent être généraux et communs à toutes les communautés non Musulmanes et servir de règle en de semblables matières."

Community forms a General Assembly, which elects the Grand Rabbi of the Community, and also a General Council, consisting of 19 members, whose duties are to administer the affairs of the Community, and render justice in cases of personal statute. This Council may, however, delegate certain of its duties to special commissions appointed for the purpose. In Cairo the Community again forms itself into a General Assembly, which elects an Administrative Council, composed of a president, vice-president and 9 members, whose duty it is to administer the temporal affairs of the Community, while the spiritual affairs are entrusted to the Rabbis, who also act as judges of personal statute.

If this summary of the Constitutions of the different non-Moslem communities is not as precise as could be desired, it only reflects what is the predominating characteristic of the Laws, Decrees, Circulars and Firmans on which these constitutions are based; nor does the practice, as it exists, always conform with what is declared to be the law. There is, in fact, a very special need for reform in regard to this matter. One of the most important questions which requires reform is in reference to the number and variety of conflicts which continually arise between the different Patriarchates, between a Patriarchate and Mehkemah, or between the Mehkemah and the Native Courts. As a typical example of the conflicts which may so easily arise we may cite the following from the Judicial Adviser's Report of 1902:—"I may refer to the case of two persons belonging to the Greek Catholic Church who marry according to the rites of the Church and subsequently the husband, in order to divorce his wife, joins the Orthodox Greek Community and obtains from that Patriarchate a decree dissolving the marriage (which the Greek Catholic Patriarchate continues to regard as indissoluble) in defiance of the rule that the Patriarchates have only jurisdiction between persons professing the same religion. As regards conflicts between the Patriarchates and the Mehkemahs, it frequently happens that a Christian husband becomes a Moslem and then claims the right to force his Christian wife to submit to the introduction of other wives into her home, to bring up the children in the faith of Islam and to marry the infant daughters to Mohammedans, even without their consent. Most of the Patriarchates are accustomed to pronounce either divorce or legal separation in such cases, giving the mother the custody of the infant children, while the Mehkemahs, on the

other hand, regard the marriages as continuing to subsist and hold that the children who have not attained their majority have become Moslems by the fact of their father's conversion and must consequently submit to all the usages, as regards marriage or otherwise, of the Mohammedan religion. In such cases the Christian wife and children usually appeal to the Government for protection from the effects of such a decision, which obviously infringes the principle that one party to a contract cannot alter its essential conditions without the consent of the other—the principle which is acted upon in Europe as regards marriages where one of the parties has subsequently changed his or her nationality and thus endeavoured to import into the marriage rights and obligations to which it was not originally subject."

One possible solution of these conflicts, considering that so many of them depend upon the relationship of marriage, might be to make the courts of the Community which had originally celebrated that marriage exclusively competent. But the better system is probably that followed by the Egyptian Government, which applies the maxim "Actor sequitur forum rei." This, however, does not solve all difficulties, and there is very great need of some supreme Commission, with powers to consider all such conflicts. A suggestion to this effect has been made by the Judicial Adviser: "A permanent Commission at the Ministry of Justice, presided over by the Minister and composed of two functionaries and one delegate from the religious authorities concerned in the dispute."[1]

The most celebrated conflict which has recently arisen between the Mehkemah and the Native Courts was in 1900, and had reference to the appointment of a Nazir to a Wakf. The Mehkemah appointed one person, while the Native Courts appointed another; both decisions were final. The Nazir appointed by the Mehkemah, which had been the first to give a decision, was in possession. The Government did not feel that it was politic to dispossess him, since, if this were done, "it might give rise to the impression that a decision of the Native Court could overrule one given by the Moslem religious court on a semi-religious question."[2] A decree was in consequence promulgated in 1901 confirming

[1] The Judicial Adviser's Report.

[2] See the Judicial Adviser's Report for 1902.

the Mehkemah appointment, partly no doubt on the principle of "Melior est conditio possidentis." A Commission was thereafter appointed to consider the question of jurisdiction, and it decided in favour of the Mehkemah. The regulation of Wakfs is the most productive of conflict between these two courts, and the whole question is at present under discussion, and a decree will probably be issued in the near future dealing with the whole question. The basis of arrangement will probably be on the lines that Private or Ahli Wakfs will be within the exclusive jurisdiction of the Native Courts, while the Mehkemahs will be alone competent in questions relating to Charitable or Shari'y Wakfs. This, however, is not the only possible cause of conflict. Articles 155, 156, and 157 of the Native Civil Code are also a fruitful source of such disagreements. These articles provide for alimony being given by persons to ascendants, descendants, or other near relations in the case of necessity, whereas the provision of alimony is looked upon by the Mehkemah as a part of personal statute, and, therefore, within its exclusive competence.[1]

[1] The subject of the Non-Moslem Communities has been dealt with in considerable detail in a work recently published: "Les Patriarcats dans l'Empire Ottoman et spécialement en Egypte," by Sésostris Sidarouss Bey, Paris, 1907.

CHAPTER XVII

THE PRIVILEGE OF LEGISLATION SINCE THE REFORM OF 1876

THE privilege of Legislation, whereby foreigners resident in Egypt were exempt from the application of the local Egyptian Law, was in its origin the natural consequence and sequel of the privilege of Jurisdiction; the reform of the latter privilege could not, therefore, be carried out without affecting the privilege of Legislation. Before the Reforms of 1876 foreigners resident in Egypt were governed exclusively by their national law; but when the new courts were instituted it was out of the question that they should be asked to apply the national law of the parties suing before them. A Legislative Reform was the natural and necessary corollary to the reform of the courts. The most important difficulty in regard to any reform of this privilege was to decide upon the nature and character of the authority which should be given power to legislate. It was impossible to attribute this power to an entirely foreign authority. It was equally impossible to entrust the rights of foreigners to the ordinary Egyptian legislator—the legislative power in Egypt being in the hands of the Khedive alone, since his Divan or Privy Council exercised no practical control over legislation. Theoretically, as the new courts were Egyptian, the authority which made the laws to be applied by them should have been Egyptian also. But, on the other hand, the new courts could not have been instituted without the eonsent of the Powers. It was therefore decided that the laws to be applied by the Mixed Courts should be drawn up with the consent and assistance of the foreign Powers. Mixed Codes were, in accordance with this decision, drafted and submitted to the Powers for their consent and approval. The new codes were: a Civil Code, a Commercial Code, a Civil and Commercial Procedure Code, a Code of Maritime Commerce, a Penal Code, and a Code of Penal Procedure. These codes were prepared by a M. Manoury, a French lawyer in practice in Alexandria, and secretary to the International Commission which considered Nubar's proposed reforms.

Unfortunately, the circumstances of the case required that these codes should be completed with as little delay as possible. The natural consequence of this too hurried legislation has been that M. Manoury's work has frequently been made the subject of adverse criticism; but in criticising his work the difficulties which had to be overcome should be fully realised.[1]

The Mixed Courts were instituted to decide cases arising between foreigners of different nationalities, or between natives and foreigners. These cases had been, before the Reform, tried either by one or other of the seventeen Consular Courts,[2] by the local Egyptian Courts, or by the Mixed Commercial Courts; each Court applying its own particular law. There were thus, at the moment, a very large number of different systems of law in daily application to such cases in Egypt. We gather, however, from the report of the French Commission of 1867, that a practice was already in existence by which preference was, to a certain extent, given to French Law.[3] This latter fact helps to justify the policy adopted of founding the new Codes on the Codes of France. There was also the precedent set by the Turkish Government, which had to a large extent copied French Law in the series of Codes promulgated between 1850 and 1864. The very extensive interest taken by the French nation in Egyptian affairs at that time must also have had its influence. It will be recalled that the Suez Canal was at the time of the International Negotiations in the process of construction, under the direction of M. Lesseps, and had been opened in 1869. Although the model adopted was undoubtedly French, the Codes of the Egyptian Mixed Courts are not copied from the French Codes.[4] The principles

[1] "Il suffit d'observer que la situation de ce pays au moment de la Réforme, était une anarchie complète caractérisée par la confusion de tous les pouvoirs et par la substitution à la loi d'un arbitraire aveuglément désordonné."—P. Arminjon, "Le Code Civil et l'Egypte," Paris, 1904, p. 27.

[2] "En dehors des tribunaux locaux, il existe en Egypte seize ou dix-sept consulats qui ont droit de juridiction sur leurs nationaux."—Report of International Commission of 1869-1870, Borelli, p. lxvii.

[3] "En Egypte, la législation française en matière commerciale, et même en matière civile, est assez généralement suivie. Cela est constaté par la note égyptienne, comme par les rapports consulaires, et l'existence de cet usage se trouve établie dans des documents judiciaires (arrêt d'Aix, 24 mai 1858) et dans des actes du gouvernement égyptien (art. 41 du règlement sur la réorganisation de tribunaux de commerce)."—Borelli, p. xliv.

[4] "The Mixed Codes are a hasty adaptation of their French prototypes, prepared in an incredibly short space of time, by a single lawyer who was

are generally the same, but the actual laws are differently worded. The distinction is made clear by the fact that there are 2281 articles in the French Civil Code, but only 774 in the Mixed Civil Code. Even allowing for the omission of all articles dealing with questions of personal statute, the difference is considerable. But not only is there a difference in the number of articles, there is also an occasional but important difference in principle. Certain of the rules of the Egyptian Codes are borrowed directly from Moslem Law, and are, therefore, in contrast to the rules of the French Codes. This adoption of Moslem Law is specially noticeable in the articles dealing with immovable property; for instance, in reference to Servitude.[1] The right of "pre-emption" by a neighbouring proprietor is also a Moslem right; and certain articles in reference to the contract of sale, as, for instance, the requirement that the purchaser should have knowledge of the thing sold, or the restrictions of the power of sale during the vendor's "dernière maladie," are adopted from the same source. Nor could any more striking difference between the Egyptian and French Codes be found than in the articles dealing with risk in reference to the loss of a thing sold.[2] Another source of difference is due to the fact that the French Codes have been altered, and added to, by subse-

supposed to possess the requisite qualifications for adapting them to the special requirements of Egypt. No notes or *travaux preparatoires* of any kind are available to explain the intentions of the legislator on particular points of difficulty. The French Codes have been reproduced more or less haphazard, with little apparent system. Certain articles are omitted, others are differently worded, and it is often almost impossible to say whether this was done in order to escape, by a more or less felicitous paraphrase, the charge of a too slavish adherence to the French model, or whether the intention was to effect a real innovation." —The Judicial Adviser's Report, 1904, p. 51; see also the examples given.

[1] Article 51 of the Mixed Civil Code copies the French definition of a servitude, but adds a clause that local usage is to apply: "Une servitude est une charge imposée à un immeuble au profit d'un autre immeuble.

"Les servitudes sont réglées d'après le titre de leur constitution et *d'après les usages locaux*."

The Native Civil Code, Article 30, is in the same terms.

[2] The law in regard to the contract of lease also differs in certain important points from the French Law; and the Judges have increased the difference by deciding that it is the duty of the landlord to prove, in the event of the house let being burnt, that it was due to the fault of the lessee; whereas the French Law is that the lessee must prove that the cause of fire was due to some other cause than his or his servants' act or omission.—French Civil Code, Article 1733. See Alexandria, 29th January 1880, R. O., v. p. 125.

quent legislation; but no similar reform has found a place in the Egyptian Codes: "En promulguant un résumé des codes français, le législateur égyptien semble avoir ignoré les lois, les ordonnances, les décrets qui complètent, éclairent ou corrigent ces recueils et dont le classement sous diverses rubriques a fini par former de véritables codes: Code rural, Code du travail, que sais-je encore? . . . C'est pourquoi, actuellement en Egypte, certaines parties du champ de l'activité humaine sont à l'état de nature. Le travail n'y est pas réglementé, les droits intellectuels n'y sont pas protégés, aucun texte ne mentionne les droits d'association, de réunion, de parole et de discussion."[1]

The Egyptian legislator evidently appreciated the inadequacy of the codes, and attempted to provide for it by the following clause: "En cas de silence, d'insuffisance ou d'obscurité de la loi, le juge se conformera aux principes du droit naturel et aux règles de l'équité."[2] With this clause as their authority the Judges of the Mixed Courts have frequently adopted the jurisprudence of the French Courts, sometimes adding thereby to the confusion of Egyptian law, since the two systems are often in contradiction. This power is also of service in deciding questions which have not been dealt with in the codes. Thus the rights of copyright, patents, and trade-marks are not provided for by Egyptian law; but the Mixed Courts have, nevertheless, held that an author, inventor or merchant has a right which must be protected, and that any infringement of this right entitles him to damages.[3] M. Arminjon, in his pamphlet on the influence of the Code Napoléon in Egypt, gives examples of the adoption of French jurisprudence:[4] "En dépit de l'article 555 du Code mixte, aux termes duquel 'le partage en nature vaudra vente de chacun des copropriétaires pour sa part indivise à celui qui aura acquis le lot et

[1] Arminjon, Code Civil, p. 24.

[2] Règlement d'organisation judiciaire, Article 34, and Mixed Civil Code, Article 11.

[3] En l'absence d'une loi spéciale sur la propriété littéraire et artistique, cette propriété se trouve, par l'application de l'art. 34 du Règlement d'organisation judiciaire, placée sous la sauvegarde du droit naturel et de l'équité. En conséquence, les faits de contre-façon, devant être considérés comme constituant une concurrence déloyale, peuvent motiver l'allocation de dommages-intérêts, au profit de la partie lésée."—17th July 1876, R. O., ii. p. 161. There are a large number of cases in the same sense.

[4] Arminjon, Code Civil, p. 25.

produira les mêmes effets,' divers arrêts de la Cour d'Alexandrie déclarent 'que l'acte de partage de biens communs, n'est pas en lui-même attributif mais déclaratif du droit de propriété.'[1] Plus tard la même Cour fait intervenir la théorie de la responsabilité contractuelle à l'effet d'allouer une indemnité aux victimes des accidents de travail. Le droit des assurances, la condition juridique et le statut international des êtres de raison, d'une façon générale, toutes les parties de l'encyclopédie juridique auxquelles nul texte n'a été directement consacré par les codes, sont également réglementées conformément aux théories élaborées par nos auteurs et par nos arrêts, dont les ouvrages ou les recueils se trouvent dans les bibliothèques de tous les jurisconsultes égyptiens, sont constamment cités à la barre et inspirent les considérants des conclusions et des jugements."

These Codes were declared by the Règlement d'organisation judiciaire to be the Law applicable by the New Courts; but the Règlement and Codes themselves appear to recognise their imperfections and limitations. Article 34 of the Règlement, as we have seen, provides that the Judges shall have power to refer to the "Droit Naturel" or to the rules of Equity whenever they find that the codes are silent, insufficient or obscure.[2] Provision was also made for the modification of the codes, and this power of amendment was, in the original scheme, placed largely in the hands of the Judges of the Mixed Courts, thus: "Les additions et modifications aux présentes lois seront édictées sur l'avis conforme du corps de la magistrature, et, au besion, sur sa proposition; mais pendant la période quinquennale, aucun changement ne devra

[1] Alexandria, 26th December 1878, R. O., iv. p. 72; Alexandria, 4th April 1889, B. L. J., i. p. 147.

[2] Règlement d'organisation judiciaire, Articles 34, 35 and 36:—

Article 34. "Les nouveaux tribunaux, dans l'exercice de leur juridiction, en matière civile et commerciale, et dans la limite de celle qui leur est consentie en matière pénale, appliqueront les codes présentés par l'Egypte aux puissance et, en cas de silence, d'insuffisance et d'obscurité de la loi, le juge se conformera aux principes du droit naturel et aux règles de l'équité."

Article 35. "Le gouvernement fera publier, un mois avant le fonctionnement des nouveaux tribunaux, les codes, dont un exemplaire, en chacune des langues judiciaires, sera déposé, jusqu'à ce fonctionnement, dans chaque moudirieh, auprès de chaque consulat et aux greffes de la cour d'appel et des tribunaux qui en conserveront toujours un exemplaire."

Article 36. "Il publiera également les lois relatives au statut personnel des indigènes, un tarif des frais de justice, les ordonnances sur le régime des terres, des digues et des canaux."

avoir lieu dans le système adopté."[1] This, however, appeared to the Egyptian Government to be too serious an infringement of the principle of the separation of the Judicial and Legislative authorities, and the question was brought before the Powers in 1880, when the question of the continuation of the Mixed Courts had to be considered. The following proposals were made by the Egyptian Government to the International Commission which represented the Powers in 1880: "L'initiative et la préparation des lois appartiennent exclusivement au Gouvernement égyptien. Toutes lois apportant modifications ou additions aux Codes égyptiens seront préparées par le Gouvernement et soumises, avant leur promulgation, à l'approbation d'une commission mixte composée de trois magistrats étrangers désignés respectivement par la Cour de révision" (the institution of which had also been suggested), "la Cour d'appel et le tribunal du Caire, d'un membre désigné par le Gouvernement et du Ministre de la justice, président. Cette Commission statuera à la majorité des voix sur l'admission de la loi proposée." The initiative of legislation was thus to be reserved to the Egyptian Government, but the privileged situation of foreigners was acknowledged by the preponderance of the foreign element in the Commission, which had to accept the proposed modifications in the Law before they could be promulgated. The Commission of 1880 did not consider these proposals; they were, therefore, submitted to the International Commission which represented the Powers in 1884, the subject of the modification of the Codes being dropped during the intervening years, which were years of unrest. The Commission of 1884 submitted the question to a sub-committee, and the amendment finally adopted was: "La Cour arrêtera les additions et modifications au Règlement général judiciaire et au tarif des frais de justice. Elle délibérera sur ces additions et modifications en assemblée générale, avec l'assistance du procureur général, d'un commissaire du Gouvernement et de deux magistrats désignés par chacun des tribunaux de première instance. Ces délégués auront voix délibérative. Il sera statué á la majorité des voix sur l'admission des additions ou modifications ainsi préparées; elles seront rendues exécutoires par décret de S. A. le Khédive." "Les additions et modifications aux Codes en

[1] Mixed Civil Code, Article 12.

vigeur, qui ne porteront pas atteinte aux principes essentiels de la législation, seront édictées par S. A. le Khédive sur la proposition ou sur l'avis conforme du Corps de la magistrature, conformément á l'article précédent."

The result of the proposals accepted by the International Commission of 1884 was to draw a distinction between two classes of modifications—those which "ne porteront pas atteinte," and those which "porteront atteinte," "aux principes essentiels de la législation." The former alone were provided for, while the modification of the latter was presumably a question to be reserved for the consideration of some future Commission. In the event of the Egyptian Government wishing to modify the law, a very serious difficulty would arise in determining to which of these two classes it ought to belong. The question, however, was left unsettled, since the decisions of these International Commissions do not become effective until the Governments of the different Powers give their assent to them. In this case this assent was never obtained, so the situation remained as it had been before 1884. The work of the International Commission was not, however, fruitless. Three measures had been submitted to the Commission dealing with judicial hypothecs, pledge, the seizure of immovables, and bills of exchange; questions in which European residents were greatly interested.[1] As the Commission had approved these, the Egyptian Government directly addressed the Governments of the Powers, and, on obtaining their consent, they were promulgated as Decrees binding foreigners,[2] a clause being added to the preamble: "Après accord intervenu entre Notre Gouvernement et les puissances qui ont adhéré à la Réforme judiciaire." This clause is always added to Decrees which have received the approval of the Powers,[3] except in the case of Police Regulations, where the consent of the General Assembly of the Mixed Courts is considered sufficient;[4] the clause then inserted is: "Vu la délibération de l'Assemblée générale de la Cour d'Appel Mixte en date du ."

The procedure for legislation which it is intended should apply to foreigners in Egypt is described by Lord Cromer:[5] "When any proposal for a legislative change is made, the practice has been to assemble

[1] Protocol, No. 1, 10th March 1884; see Nubar Pasha's speech, pp. 6, &c.

[2] Decrees of 5th December 1886.

[3] See Decrees of 26th March and 13th April 1900, and of 24th December 1906.

[4] See Decree of 31st January 1889, *infra*, pp. 277, &c.

[5] Egypt, No. 1, 1906, p. 2.

a Commission composed of the Diplomatic Representatives in Egypt. These latter delegate inquiry into the special points under discussion to a Sub-Commission composed almost entirely of the Judges of the Mixed Tribunals. It is natural enough that both in the Sub-Commission and in the Plenary Commission some differences of opinion should arise. Every one of these differences, even although they may only refer to minute points of detail, has to be referred to the fifteen Powers concerned. If some concession is made to satisfy one or more of the Powers, it is by no means certain that it will be accepted by others. Renewed reference to every capital in Europe then becomes necessary. Thus, the delays are interminable, so much so that, as I have already said, a reform which may be greatly in the interests of both the European and indigenous population of Egypt has to be abandoned, not because it encounters any really strong opposition from any quarter, but simply because no workable machinery exists which will enable the matter to be decided." The practice has been, up to the present, to submit these legislative changes to the International Commissions which have been convoked to consider the renewal of the Mixed Courts for another quinquennial period. This opportunity was taken in 1880, 1884, 1890 and 1898; and as the mandate of the Mixed Courts fell to be renewed in February 1905, a circular of 20th May 1903 was sent to the Powers, proposing that they should agree to a further continuation for a period of five years, and at the same time proposals were submitted to them for certain additions and modifications in the Egyptian Law as it applies to foreigners resident in Egypt. An International Commission was appointed, and met for the first time on 16th January 1904. This Commission consisted of the Consuls-General of the Powers, assisted by one or more technical delegates for each Power, for the most part Judges of the Mixed Courts, and presided over by the Egyptian Minister for Foreign Affairs, assisted by two Khedivial Counsellors. If the proposed amendment on Law is accepted by the Sub-Commission, either in its original form or modified, it is then considered by the Plenary Commission, and if approved by them is submitted to the several Governments of the Powers for their assent. A Law thus assented to by the Governments of the Powers is promulgated by the Egyptian Government as a Decree in the ordinary form, except for the addition of the clause stating that the consent of the Powers has been obtained.

This system of legislation applies to all modifications of the Civil

and Commercial Codes, and all new Laws proposed by the Egyptian Government, and which are intended to apply to foreigners resident in Egypt. The same system applies in reference to penal legislation in so far as crimes and delicts are concerned, but the system is considerably modified in regard to police contraventions. The competence of the Mixed Courts in cases of crime and delict is very strictly limited by the Règlement d'organisation judiciaire; the consent of the Powers is, therefore, essential to any proposed modification in this part of the Law. The Mixed Courts have, however, full and exclusive competence in regard to all police contraventions committed by foreigners. The position of the Egyptian Government in regard to police by-laws is, therefore, on a much stronger footing than in reference to other branches of the Law. Contraventions of simple Police were enumerated in the Mixed Penal Code of 1876, in the Articles 331 to 340; but this enumeration was obviously intended to be modified and altered as circumstances might require, and it is also clear that the interests of the public in general demand that these alterations should be made in as simple a manner as possible. The problem was to determine the authority which should be entrusted with the power of revision and extension. The Egyptian Government contended that this power was conferred upon it by the Penal Code,[1] and acting upon this contention it issued new police regulations in 1884 and 1885 with the intention that they should apply to foreigners. The Mixed Courts, however, decided that these regulations could not apply to foreigners until, in virtue of Article 12 of the Civil Code, the consent of the Mixed Court Judges had been obtained.[2]

A Decree,[3] to which the Powers accorded their assent, was promulgated on 31st January 1889 to settle the difficulty. This Decree

[1] Argument based on the last section of Article 331: "Seront punis d'une amende de 5 à 25 piastres tarif. . . . Et, en général, ceux qui ne se seront pas conformés à un règlement rendu par l'autorité municipale dans les limites de sa compétence." And the last section of Article 340: "Les règlements à intervenir sur les faits non prévus ci-dessus devront déterminer la peine encourue pour contravention dans la limite des peines de simple police; dans le cas où un peine plus forte serait prononcée, elle sera de plein droit réduite dans cette limite."

[2] Alexandria, 27th January 1887, Borelli, p. 554.

[3] Borelli, pp. cxxxviii. and cxxxix. Note the clause of the preamble: "Avec l'assentiment des puissances mentionées dans Notre décret susvisé" (*i.e.* the Decree instituting the Mixed Courts which is mentioned in the first part of the preamble).

contains the two following Articles:—Article 1. "A partir du 1er février 1889, les tribunaux égyptiens mixtes appliqueront les ordonnances actuellement en vigueur ou qui seront édictées à l'avenir par Notre Gouvernement concernant le régime des terres, digues et canaux; la conservation des antiquités; la voirie (Tanzim); l'hygiène et la salubrité publiques; la police des établissements publics, tels que: hôtels, cafés, maisons meublées, cabarets, maisons de tolérance, etc.; l'introduction, la vente et le port d'armes et de matières explosibles ou dangereuses; le droit de chasse; le règlement des voitures et autres moyens de transport; la police des ports de navigation et des ponts; la mendicité, le vagabondage, le colportage, etc.; les établissements incommodes, insalubres et dangereux, et, en général, tous règlements permanents et généraux de police et de sûreté publique."

Article 2. "Les ordonnances à édicter en ces matières seront promulguées à la suite d'une délibération de l'assemblée générale de la Cour qui se bornera à s'assurer:

"1° Que les lois et règlements proposés sont communs à tous les habitants du territoire sans distinction;

"2° Qu'ils ne contiennent aucune disposition contraire au texte des traités et conventions, et, enfin, que dans leurs dispositions ils ne contiennent aucune peine supérieure aux peines de simple police."

This solution unfortunately did not settle the matter. Certain Decrees were promulgated by the Egyptian Government in 1890 and 1891 dealing with a number of different questions which required immediate regulation in the interests of public health and safety. Among the subjects dealt with by these Decrees were: The compulsory vaccination of children, the registration of births and deaths, the formalities necessary before doctors and chemists might practise in Egypt, and the regulation of public establishments of the character of hotels, cafés, and places of entertainment. The Powers held that these Decrees were in violation of the provisions of the Decree of 1889. Diplomatic negotiations followed. The Powers contended that the Decree of 1889 was restrictive, and that the consent of the General Assembly of the Mixed Court to a new police Regulation could only be given provided the following conditions were complied with:—(1) The police Regulation should be in reference to a question expressly included in the list given in the Decree of 1889; (2) its terms should not be in contradiction of rights granted by treaty or international convention; and (3) the penalties to be incurred for a

violation of the Regulation should not exceed those which could be inflicted for a breach of a police contravention. These conditions, the Powers held, had not been fulfilled in the present case. The negotiations ended in a compromise. But the important principle was established, that the Powers reserved to themselves a right of supervision over the decisions of the General Assembly of the Mixed Courts, and in virtue of this power they could declare these decisions to be contrary to the law. If the Powers do not exercise this right within a reasonable time, and veto the decision of the Mixed Court Judges, it is considered, in practice, that they have waived their right of veto and have tacitly approved of the new Regulation. The Judges of the Mixed Courts, in according their approval to a new police Regulation, are thus acting as the mandatories of the foreign Governments, who alone have the right to decide whether an Egyptian Law shall, or shall not, apply to their subjects resident in Egypt.

The privilege of Legislation now enjoyed by foreigners resident in Egypt is, therefore, in the first place, that their own national Law applies in all questions of their personal statute, in the case of crimes and delicts committed by them, or of which they are accused, and in civil and commercial cases where both parties are of the same nationality; and, secondly, that no new Egyptian Law can be made to apply to them unless it has received the express consent of their Government. This power of consent has, however, been partially delegated to the General Assembly of the Mixed Courts, which may approve police Regulations which fulfil the conditions laid down in the Decree of 1889 as defined by the negotiations of 1891.

The conditions in Egypt have changed very considerably of recent years, and each change alters the nature, if not the extent, of the privileges enjoyed by foreigners under the Capitulation. No more remarkable change has taken place in Egypt of recent years than that which has been wrought in the legislative system of Egypt. At the time of the Reform of 1876 the exclusive power of legislation was retained in the hands of the Khedive; in 1878 Government, with the assistance of responsible Ministers, was established in name, if not in actual fact. The revolutionists of 1882 instituted a paper Constitution of the most advanced democratic character—a Constitution which disappeared in the course of the year as completely as did its authors. In 1883 a new Constitution was drafted on lines that considered the conditions actually existing in Egypt—a

Constitution which contained a representative element, but which was based on the habits of the people, and was restricted according to what they might be expected to understand or learn of Constitutional principles. The Legislative authority, so far as local Egyptian subjects alone are concerned, is now exercised, in virtue of this Constitution, by the Khedive,[1] the Council of Ministers, the Legislative Council, and the General Assembly. The two last, however, have very little influence on legislation. The Council of Ministers was first instituted by Ismaïl Pasha by a Khedivial Decree of 10th December 1878. From the time of Mohammed Aly a Council had existed which, whatever its powers of influencing their Ruler, certainly took some share in legislative work, even if this work consisted simply in the drafting of a law already accepted and outlined by the Pasha. Even before the time of Mohammed Aly, and probably from the date of the Ottoman conquest of 1517, Egypt had in part been governed by a Divan or Council of Mameluke Beys. The Council, which existed before the Decree of 1878, was called the Privy Council. References to this Council are made from time to time in different legislative measures.[2] Its composition varied from time to time,[3] and it was reorganised by a Superior Order of 9th December 1872. The Decree of 1878 provided for seven Ministers, the different Ministers being Foreign Affairs, Finance, War and Marine, Interior, Justice

[1] Firman, 8th June 1873, granted to Ismaïl: "Le Khédive d'Egypte est autorisé à faire des règlements intérieurs et des lois toutes les fois qu'il sera nécessaire." In the original Firman of 1841 Turkish Laws were to apply in Egypt, and nothing was said about the powers of the Egyptian Pasha to make law. In 1867 the Turkish Laws which were to apply in Egypt were said to be only the "Organic Laws." Thus a power of legislation in the Khedive is inferred—a power which had, in practice, been fully exercised before 1867. The first direct grant was not till 1873. The wording of the present Firman, 27th March 1892, is more liberal than those previously granted. The practice, however, has never varied, the Khedives always having exercised full powers of internal legislation.

[2] In the Instructions which accompanied the communication of the Hatti Sherif Gulhana, Gélat Arabic edition; in a Superior Order of 15th August 1844, Gélat, 1st series, vol. ii. p. 42. The Land Law of Said Pasha was prepared by the Council, and the Moukâbalah is in the form of a deliberation of the Privy Council sanctioned by the Khedive.

[3] The Firmans of 1866 and 1873, providing for a Council of Regency, laid down an order of precedence as regards certain at least of the members of the Privy Council. For a recent list of the members of the Council, see a Superior Order of 1873 relating to the Meglis-el-Hasby, Gélat, 1st series, supplement, p. 133.

and Public Works. The duties of the Departments of Public Instruction and Wakfs were combined in the hands of a single Minister, while the Departments of Lighthouses and State Domains were under the direct administration of the Council itself. Without tracing the changes which have since taken place, the Ministers holding office at present are—the Ministers of Interior, Public Works, Education,[1] Foreign Affairs, Finance, Justice and War. The Minister of Interior is Prime Minister or President of the Council of Ministers. The Department of Wakfs is now administered by a special administration outside the ordinary scheme of Government and directly under the control of the Khedive.[2]

The Legislative Council and General Assembly were instituted by the Organic Law of 1st May 1883, and are regulated by that Law and the Electoral Law of the same date. These two Laws were the result of and are founded on a Report of Lord Dufferin of 1883 to the British Minister of Foreign Affairs.[3] The chaos, which remained as the legacy of the Revolution of 1882, was such that the merest tyro in statecraft could see that Reform was essential; but the more difficult problem for those who had assumed the responsibility of directing the affairs of Egypt was to determine the nature and extent of this reform. The whole administration, as well as the army and the Law Courts, required reform, and Lord Dufferin's Report deals with all these questions. We, however, are only interested, for the moment, in the reform of the legislative system.

This part of Lord Dufferin's Report commences with a reference to the causes to which the British Occupation was due, and contains a statement that the result of intervention was to impose on the British Government the duty to see that "our intervention should be beneficent and its results enduring; that it should obviate all danger of future perturbations; and that it should have established on sure foundations the principles of justice, liberty, and public happiness." Thus, at the outset of his Report, Lord Dufferin makes

[1] Up to October 1906 the Ministries of Public Works and Education, although separate Departments, were under the same Minister; but at that date a Minister of Education was appointed.

[2] Khedivial Decree, 23rd January 1884.

[3] Egypt, No. 6 (1883). Further correspondence respecting Reorganisation in Egypt, No. 38, the Earl of Dufferin to Lord Granville (received 16th February 1883), pp. 40 to 95.

it clear to the British people that their act of intervention had imposed upon them a serious duty—nothing short of the regeneration of Egypt—a duty which, if it was to be performed, could not admit of any policy of immediate evacuation. A new administration was necessary, and this administration should be based on "national independence and constitutional government." "It is true that at present Egypt is neither capable of revindicating the one, nor fitted to enjoy the other;" but the magnanimity of Europe will secure the first, "while she may trust to time for the development of the latter." No false hopes were held out. The Report makes it absolutely clear that the Reform, which was essential, was a thing of time, of slow growth, that fruition could only be looked for in some future generation. This point is most clearly stated and reiterated again and again, and it is a point which is still of importance at the present time. Egypt was not fitted to enjoy constitutional government in 1883, and could not hope to be till after many years. The cause of this inability is given: "In the East even the germs of constitutional freedom are non-existent. Despotism not only destroys the seeds of Liberty but renders the soil on which it has trampled incapable of growing the plant." Therefore time was all essential. "Few institutions have succeeded that have not been the outcome of slow growth and gradual development." To transplant fully developed institutions into an uncongenial soil would be to court ruin. Lord Dufferin, as British Ambassador to Constantinople, had the experience of Turkey before him and the failure of the Tanzimat. Nor did the history of Egypt under Mohammed Aly and Ismaïl fail to offer yet another object lesson of the impracticability of such an unreasoned policy. The soil required years of preparation. Egypt, however, had certain characteristics which tended towards the constitutional idea. In the first place, the Mohammedan religion is essentially democratic; and, secondly, "the primitive idea of the elders of the land assembling in council round their chief has never altogether faded out of the traditions of the people. Even the elective principle has been to some degree preserved among the village communities." We are not in a position, nor is this the place, to discuss the measure in which the Mohammedan religion tends naturally towards constitutional ideas. Democratic the religion certainly is, but constitutional government is still foreign to Moslem States, and certainly was in Egypt in 1883. The second point mentioned by Lord Dufferin refers to the Chamber

of Notables.[1] His own words are sufficient criticism of this institution, and show the insignificant extent to which it followed constitutional principles. "Most people have fondly imagined that a Chamber of Notables implied constitutional freedom." But in reality this Chamber did not in the smallest degree represent the wants and instincts of the mass of the population. "The component parts of the Chamber of Notables were large landed proprietors, rich townspeople, and village Sheikhs, that is to say, the three classes most indifferent or opposed to the interests of the fellaheen. Yet, after all, it is with the welfare of these dumb labouring masses, the victims of the conscription, the *corvée* and the *courbash*, that we are principally concerned." The Sheikhs of the village were, in theory, looked upon as the "spokesmen and delegates" of the village community. In reality, "they may for the most part be looked upon as the most inveterate oppressors of those placed under their authority." Nor did the "elective principle" seem to have been preserved in the village in a state of great purity. "In the first place, there are half-a-dozen Sheikhs or sometimes many more, in every village, each of them connected with varying sized sections of the community; and, in the next, they are either hereditary dignitaries or the direct or indirect nominees of the authorities, or have been chosen by the headmen of the adjoining districts."

Such, then, was the situation in Egypt before 1883, and out of these conditions it was required that a system of constitutional government should be built up. Lord Dufferin's theory was that, if it was desired to create "a vitalised and self-existent organism,

[1] The Chamber of Notables had been in existence since 1866, but in reality it was merely a screen behind which Ismail carried on his personal system of government. The people had no real share in the election of its members, and the members of a village could not be said to be represented by the Sheikhs. The leaders of the Arabi Rebellion introduced, by a Decree of 7th February 1882, a very advanced system of constitutional government, founded on the institutions of the more advanced democratic States of Europe. The Decree instituted a Chamber of Deputies, without whose consent no legislation was possible, and in every way the Chamber was founded on the most advanced ideas. Members were to be paid, and their persons were inviolable; there was to be an appeal to the country if the Chamber and the Cabinet were in conflict; and the regulation of taxation was in the hands of the Chamber. The Chamber never met, but Lord Dufferin's reference to the futility of "Paper Constitutions" is not without significance, as well as what he says in regard to the necessity for making all institutions conform to the habits of the people.

instinct with evolutionary force," they must confine themselves to "what already exists, and endeavour to expand it to such proportions as may seem commensurate with the needs and aptitudes of the country." With this principle before him, he takes from the existing scheme the system of a village electorate having its own delegate or representative. The people of each village are to be given "perfect electoral freedom and the personal right of choosing their representative." The territorial division of Egypt introduced by Mohammed Aly had been into the Moudiriah or Province, the Markaz or Commune, and the Village. The smallest of these divisions, the village, was to be taken as the parliamentary constituency. But it was clear to Lord Dufferin that the fellaheen were as yet unfit to elect directly the members of the legislature. The village delegate or spokesman was, therefore, to be elected merely to elect, in his turn, a member for the Provincial Council, the election of the members of the legislature being placed in the hands of the Provincial Council—a body with no legislative power, but rather a Local Government Board entrusted with the management of certain questions of local importance, such as the supervision of local irrigation. "It is certain that local self-government is the fittest preparation and most convenient stepping stone for anything approaching to a constitutional régime." Thus the Provincial Council was to be the training ground for the "village Hampden," and a means of instructing the fellaheen in the principles of constitutional government.[1]

[1] In actual practice the Provincial Councillors take no interest in local affairs, unless they chance to affect their personal and private interests. The Council must be convened at least once a year, and this meeting generally takes place in November or December. Other meetings are very exceptional. The Mudir presides, and, in addition to the elected members, the Irrigation Inspector of the Circle and a representative of the Ministry of Public Works attend. The chief questions submitted for consideration are proposals for new irrigation works, new bridges, and new agricultural roads. The actual form the proceedings take is to consider a large number of petitions presented by persons living within the province for channels for water, drains, roads, &c. All these petitions are personal. They are read by the Mudir and handed to the representative of the Department of Irrigation or Ministry of Public Works, according to the nature of the demand. The elected members of the Council take no active part in the proceedings unless any particular member chances to have a personal interest either in favour of, or in opposition to, a petition. There is practically no public spirit or any sign of a desire to benefit the Province as a whole—all is personal. The best criticism of the petitions is that they are seldom, if ever, found practical, because they are so personal, and if carried out would benefit only one person or only one village.

The elective members of the Legislative Assembly were to be persons elected indirectly by the village constituency; the members of the village were to choose delegates, who in turn were to elect Provincial Councillors, and the Provincial Councillors were to elect, from their own number, the members of the Legislative Assembly. But, as constitutional principles were foreign to the ideas of the Egyptian people, and the electorate could not be expected to choose persons already conversant with the duties of a legislator, only a moiety of the members of the Council were to be elected, the others were to be appointed by the Khedive, holding their office for life. The nominated members were to hold office for life, "in order that they may be thoroughly independent." Lord Dufferin gives the arguments in favour of this nominated element: "It would secure the presence in the department of business of a certain number of distinguished men, whose experience, social station, and antecedents may have entitled them to the confidence of the Chief of the State, as well as eminent Copts and other Christians who might be unlikely to win the favour of Mohammedan constituencies; at the same time, that it would preserve a certain community in the traditions of administration." All these checks on the voice of the individual elector show clearly how little prepared the Egyptian people were for constitutional government; but the duties entrusted to the Legislative Council make this incompetence still more conspicuous. "The initiative of every measure must of necessity for the present remain with the Government, nor should the Council of Legislation be endowed with the power of vetoing their decisions; but no Law or Decree involving administrative changes should be promulgated or acquire legal force until it shall have been submitted to the Council, to whom should be attributed full liberty of criticism, discussion and suggestion." Lord Dufferin himself answers the criticism that this Council "does not embody the Parliamentary principle in the true acceptance of the term," but is "consultative rather than lawmaking. . . . Few people would be prepared to maintain that Egypt is yet ripe for pure popular government. Under these circumstances, it seems to me that we should be undertaking a very great responsibility if we insisted on forcing upon her institutions which all her most liberal-minded public men are convinced will replunge the country into confusion and chaos the moment we leave it to itself." In addition to these consulta-

tive powers in reference to legislation, the Council was to have the Budget submitted to it, "but the various charges and obligations resulting from the Law of Liquidation or from International Conventions would remain outside the sphere of their deliberations."

Ever mindful that he was preparing the foundations of a future, rather than building a present, legislature, Lord Dufferin proposed the formation of a second chamber, to be called the General Assembly. The Legislative Council, he thinks, "cannot be regarded as a thoroughly popular body, or as being in sufficiently direct contact with the labouring masses. In order to remedy this defect it might be found desirable on occasion to re-enforce the Council of Legislation by a more democratic element." This Assembly was to consist of the Legislative Council, with the addition, on the one hand, of the ministers, and on the other, of some forty-six notables, elected, not by the Provincial Councils, but by the delegates chosen by the villages. "By thus uniting the two bodies into a single Chamber we shall ballast what for a long time would probably prove the childish inexperience of the larger section with the knowledge of affairs and habits of business possessed by their colleagues of the Council." The anomalous nature of this Assembly's constitution is thus accounted for by the ignorance of constitutional principles inherent in the Egyptian people. The Assembly should only be consultative, and should only meet at rarer intervals than the Legislative Council; it should be given the right of discussion, criticism, suggestion, but no power of vetoing legislation. One power, however, this Assembly was to possess beyond those of the Legislative Council: "In one important particular the General Assembly should be endowed with an absolute right of veto, namely, in respect of any measure involving the imposition of fresh taxation."

We have considered Lord Dufferin's Report in detail for two reasons: Firstly, that without this detailed consideration it is difficult to understand the very anomalous character of the Egyptian Legislative Institutions; but after reading the Report we understand that these anomalies are due to the foreignness of constitutional principles to the minds and characters of the Egyptian people. The soil of Egypt had to be prepared through long years for the seeds of constitutional government. Secondly, when the

question whether Egypt is prepared for an advance towards constitutional government becomes one of practical politics, we have before us a very complete list of the points to be considered and the questions which require to be answered, before this advance is made. Do the village electors take any interest in the work of the Legislative Council or Assembly? do they watch the actions of their representatives? How far have the delegates of the people advanced in preparedness for constitutional government by their practice in local self-government? Do they interest themselves in the management of local affairs? Does the religious spirit still prevent the best man being elected irrespective of his religion? Does the system of nepotism still exist? For, until these latter evils cease, the system of nominated members is inevitable. Such are the questions suggested by the Report, and they must receive a favourable answer before any advance is possible.[1]

The Organic and Electoral Laws, which give effect to these proposals, closely follow the lines of Lord Dufferin's Report. We shall only mention the more important provisions of these Laws. The electorate consists of Egyptian local subjects over twenty years of age.[2] These electors choose an "elector delegate" for

[1] It is doubtful whether Lord Dufferin would have recommended the institution of these two Assemblies if he had felt that he possessed an absolutely free hand. As Sir Auckland Colvin has recently suggested, Lord Dufferin's own personal views may be discovered in the Report itself: "His desire was for the 'masterful hand of a Resident.'" Nor is the admission earlier in the Report without significance: "A long enslaved nation instinctively craves for the strong hand of a master rather than for a lax constitutional régime." But there was a Liberal Government in England at the moment, and although their instructions were short and not of the clearest, it was evident that the more liberal the elements of the new scheme the better they would be pleased. "There was a feeling in England," writes Sir Auckland Colvin, "that as the Egyptian revolt had raised the cry of self-government, some measure of self-government should be accorded. A Liberal Government looked with unction on such an issue; the British public, profoundly ignorant in Egyptian matters, but pleased to see its most characteristic feature reflected in all waters, acquiesced." — Sir Auckland Colvin, "The Making of Modern Egypt," London, 1906, p. 31. The whole of Sir Auckland Colvin's criticism of the Report is instructive. See pp. 27 to 32.

[2] Electoral Law, Article 1. The Decree of 29th June 1900 defines an "Egyptian local subject" as:—

1. Persons domiciled in Egypt before 1st January 1848, and who have retained their Egyptian domicile.

2. Ottoman subjects born of parents who were domiciled in Egypt, provided they themselves have retained their Egyptian domicile.

3. Ottoman subjects born and domiciled in Egypt who have fulfilled the requirements of the Egyptian Mili-

each constituency or village. In Cairo and Alexandria the electors of each Kism, or quarter, choose an elector delegate; and an elector delegate is chosen by each of the six large provincial towns, namely, Rosetta, Damietta, Port Said, Suez, Ismaïlia, and El-Arish. There is a general election every six years.[1] The electors delegate of each Moudiriah or Province, but not those of the eight large towns, elect the members of their Provincial Council. There are fourteen Provinces, and the elected members in these councils vary from three to eight.[2] The electors delegate of Cairo elect one member of the Legislative Council, and the seven other large towns together elect one member; while each of the fourteen Provincial Councils elect one of their number as their representative in the Legislative Council. To be eligible for election the candidate[3] must, in the case of the Moudiriahs, be a member of the local Provincial Council, and all candidates must—(*a*) be able to read or write; (*b*) have paid at least £E.50 in taxes in his town or province during the previous two years; and (*c*) have been inscribed on the electoral roll for five years. There are thus sixteen elected members of the Legislative Council, to these are added fourteen members who are nominated for life. The elected members hold their mandate for six years, but half the number retire after three years. Thus there is an election for half the number of elected members every three years. The nominated members are paid, but the elected members only receive a travelling allowance.

The General Assembly consists of the seven Ministers, the members of the Legislative Council and forty-six Notables elected by the principal towns or by the village electors delegate.[4] The

tary Law, either by service or by payment.

4. Persons born in Egypt of unknown parents.

[1] The Electoral Law does not mention the duration of the mandate of the electors delegate, but practice has fixed the period at six years, being that of members of the Council and Assembly.

[2] Organic Law, Article 13.

[3] The Organic Law did not mention the "conditions of eligibility" required in a candidate for membership of the Legislative Council, so the practice has been for the Decree, appointing an election to take place, to prescribe the necessary conditions, and these, as a rule, are the same as are required in a Provincial Councillor by the Organic Law, Article 14. See Decree of 15th September 1883, and Decree of 1st January 1902.

[4] Eleven Notables are chosen by the principal towns: Cairo electing four, Alexandria three, Damietta and Rosetta each one, Port Said and Suez one

large towns elect eleven members, four being elected by Cairo and three by Alexandria; the other thirty-five are elected by the electors delegate in the different Moudiriahs. To be eligible a candidate must be able to read and write, be thirty years of age, have paid £E.20 of land or house tax in the town Moudiriah which he desires to represent, and have been on the electoral list for five years. They are elected for six years.

The Legislative Council meets on the first working day of every second month, commencing with February. The quorum is two-thirds of the members not on leave, and decisions are taken by a simple majority, the president having a casting vote; all votes must be given in person. The Ministers have the right to attend the meetings of the Council and to speak; but they are not allowed to vote. Or they may send one of the higher officials of their Department to attend a meeting of the Council and represent them during the discussion of some particular question which interests their Department. The powers of the Legislative Council refer in the first place to Legislation, and, secondly, to the Budget. In regard to Legislation the Government is, according to the Organic Law, obliged to consult the Council as to every Law and every Decree "portant règlement d'administration publique" before they are promulgated.[1] The question arose as to the meaning which should be given to this article, and it was decided in 1897 that the only Legislative measures which required to be submitted to the Council were those which not only concerned the mass of the population, but also introduced new principles;[2] a decision

between them, and also Ismaïlia and El-Arish share one. The other thirty-five Notables are elected by the Moudiriahs—Gharbiah elects four, five Moudiriahs elect three each, and the other eight elect two each. Of the members elected in Gharbiah, one is chosen to represent Tantah, one of the Dakaliah members represents Mansourah, and one of the assistant members represents the town of Assiut.—Organic Law, Article 41.

[1] Organic Law, Article 18.

The terms Law and Decree (loi et décret) are synonymous in Egypt, although in France the two expressions refer to different forms of legislation.

[2] A decision of the Committee of Contentieux of 18th March 1897. This is a Committee consisting of the Khedivial Counsellors, or special legal advisers of the Egyptian Government. The contentieux was first established by a Decree of 27th January 1876, but has since been reorganised, more especially by a Decree of 20th April 1884.

The following are examples of the measures which, in the opinion of the Committee of Contentieux, need not be referred to the Legislative Council:—

which considerably restricts the legislative powers of the Council. The Legislative Council has also the right to invite the Government to introduce new legislation in regard to any point which seems to it to require reform. When a new Law has been accepted by the Council of Ministers, and it is one which requires to be submitted to the Legislative Council, it is referred to the Council for their approval. The Council discuss it; they may suggest amendments to it, and vote on these amendments. The law is then sent back to the Council of Ministers, together with their amendments, if any have been accepted by the vote of the Legislative Council. The Council of Ministers is not bound to accept these amendments, but, if they refuse to accept them, they must give their reasons to the Legislative Council for so doing. The law-making power of the Legislative Council is thus confined to a right of criticism and suggestion, but there is no active power, and, above all, no right of veto or effective power of amendment.

The Budget[1] is submitted to the Legislative Council at their meeting on 1st December, after it has been discussed and has received the approval of the Council of Ministers. The Council have

1. Measures belonging to the competence of the executive and having for object the execution of a law or decree.

2. Measures supplementing a law or decree.

3. Decrees regulating internal departmental organisation, State lands, contracts, concessions, etc.

4. General regulations in so far as they introduce no new principle.

In addition to the cases in which the Government is obliged to consult the Legislative Council, it *may* submit any measure to the Council, if it wishes to obtain its views. But if this Law is afterwards modified, the modifying Law does not require to be submitted to the Council. A decision of the Native Court of Appeal further decides that if the original Law was not considered by the Council, it is not necessary that it should consider the amending Law.

[1] The stages through which the annual Budget in Egypt passes are: Before 15th September the Heads of each Department must send to the Ministry of Finance a statement containing their proposed expenditure for the coming year. From 15th September to 25th November these proposals are examined in relation with the estimates of the ensuing year by the Finance Committee, which consists of the Minister of Finance, the Financial Adviser, the two Under-Secretaries of State, and two other of the more important members of the Ministry of Finance. On 25th November the Committee submit the Budget which they have prepared, together with an explanatory Note, to the Council of Ministers, who consider and vote upon it, and then refer it to the consideration of the Legislative Council at their meeting on 1st December. The Budget is promulgated as a Decree on 25th December.

three weeks in which to consider the Budget, but, as in the case of legislation, their powers are reduced to criticism and suggestion. If they suggest any amendment it is submitted to the Council of Ministers, who consider it, but are not bound to accept it; if, however, they refuse to accept any amendment they must give their reasons. The Budget is promulgated as a Decree on 25th December, and if, by any chance, the Legislative Council have not finished their consideration of the Budget by that time it makes no difference, and the Decree is promulgated. The annual accounts[1] of each year are also submitted to the Legislative Council at one of their meetings, either in August or earlier. The discussion of these accounts is subject to the same restrictions as in the case of the Budget or of legislation. The Council are further restricted in their limited powers, and may not discuss or make suggestions in reference to the Tribute, the Public Debt, nor any Charges resulting from the Law of Liquidation or any other International Convention.[2] Nor is any Decree which is subject to the approval of the Powers submitted to the Legislative Council.[3]

The Legislative Council have, further, certain duties in reference to petitions addressed to the Khedive.[4] Every Egyptian is entitled to present a petition to His Highness, but in practice they are sent to the President of the Legislative Council, who submits them to the Council. After they have been examined and approved by them they are forwarded to the Minister competent in regard to the matter referred to. If the petition relates to a personal affair which is within the competence of a Court of Justice, the Council is obliged to reject it.

The General Assembly should be summoned by Decree once every two years. In practice, however, there are three occasions, namely, in 1885, 1887, and 1901, when its meetings were postponed beyond the statutory date. On the last of these occasions the Decree postponing the meeting expressly recites that the reason for postponement

[1] In practice the annual accounts are published in the March following the year to which they belong. But during the course of the year the accounts of each Department are published in the issue of the Official Journal of the month following.

[2] Organic Law, Article 23.

[3] No Decrees relating to the laws which are to be administered by the Mixed Courts can be submitted to the Legislative Council. Discussion by the Council before the Decree had been accepted by the Powers would be premature and embarrassing; while discussion after acceptance would be useless.

[4] Organic Law, Articles 20, 21.

was that the Government had no questions to submit to the Assembly for their discussion. This excuse, however, overlooks one of the most important duties of the Assembly, which is to consider any matter of public importance and make suggestions and representations to the Government. By far the most important power of the Assembly is their right to vote on any proposal to introduce new taxation. "No new tax, direct, land or personal, can be imposed in Egypt without first having been discussed and accepted by the vote of the General Assembly."[1] The Assembly *must*, further, "be consulted in reference to all public loans, the construction or abolition of all canals or railways which cross several Moudiriahs, and on the general classification of the land of the country for the purpose of assessing the land tax."[2] The Government has the right to reject the opinion of the Assembly in regard to these questions, but if it does it must state its reasons for so doing. The Government *may* submit any question for the consideration of the Assembly, and the Assembly may spontaneously give its advice or opinion on any subject, whether economic, administrative, or financial; and in each case the Government should state, if it refuses to accept these, the reasons for its refusal.[3]

Such were the constitution and the powers of the Legislative Council and General Assembly as laid down in the Laws of 1883. How has the scheme worked? The Legislative Council has, at least in recent years, fully answered the expectations of the framers of these Laws. In spite of the fact that the *rôle* of the Council is purely consultative, we find from the minutes of the Council meetings that the Government has, when presenting any recent measure of special importance, submitted it to the Council, together with a detailed statement of its policy and of the reasons which have led it to adopt the proposed legislation. As a rule the Ministers do not attend the meetings of the Council, but they frequently send an official from their department to explain any difficulties which may arise. Amendments proposed by the Council have frequently been accepted by the Government, and the recent

[1] Organic Law, Article 34. The Arabic text reads: "Taxes or dues on movable or immovable property and personal taxes." The difference has led to difficulties on more than one occasion, but it has invariably been decided that the French text is authoritative, and the Mixed Court of Appeal have accepted this decision as final. B. J. L., v. p. 81.

[2] Organic Law, Article 35.

[3] Organic Law, Article 36.

practice of the Legislative Council in referring the more important measures to the consideration of specially appointed sub-committees is likely to still further strengthen their hands. The work of the General Assembly, though frequently helpful to the Government, has not been of a kind to show any very immediate or very useful results. The powers of the Assembly are in many cases too similar to those of the Legislative Council. Its most important duty undoubtedly is that which refers to taxation, but, speaking generally, the whole policy of the Government since 1883 has been directed to a reduction of taxation, and there have only been three occasions on which the Assembly has been called upon to vote an increase of taxation,[1] and in each case the reasons for increase were so beneficial to the people that the Assembly can have experienced little or no difficulty in supporting the Government as a consultative Chamber. The influence of the Assembly is very greatly nullified by the very long intervals between its sittings; and it is doubtful whether the wishes of the fellaheen are any more thoroughly represented by the Notables than by the elected members of the Legislative Council. A special difficulty in Egypt at the present is still the difficulty of knowing the wishes of the uneducated cultivators. It is not clear that they take any interest in current politics, unless it be in reference to a measure which they understand is to affect them personally and privately, nor can we expect any other result from a people which can neither read nor write. The students of the Government Higher Schools who are not employed by the Government, and those Egyptians who are educated abroad, are probably the only politicians in Egypt, and even they are too often ill-informed on constitutional questions.[2]

[1] In reference to the three cases in which, according to the Organic Law, the Government *must* consult the General Assembly, the actual practice falls considerably short of the law. Thus, in practice, proposed loans, with the exception of the Guaranteed Loan of 1885, have not been submitted to the Assembly. In reference to canals and railways, the only example of the Government consulting the Assembly was in reference to the irrigation schemes for utilising the million devoted out of the Guaranteed Loan to purposes of irrigation. The Assembly was consulted in regard to the classification of lands for the purposes of assessment, authorised by the Decree of 10th May 1899.

[2] Political Science and Constitutional Law and History were only introduced into the curriculum of the Government Schools in 1906. Before that date they were not systematically taught.

Something might be done to encourage a greater interest in the work of the Legislative Assemblies if an official summary of the minutes of each meeting of the Council of Ministers, Legislative Council, and General As-

The Khedive, the Council of Ministers, the Legislative Council, and the General Assembly are thus all interested, more or less directly, in the preparation of legislation which is to apply to local subjects; but the true *Legislature* consists, in practice, only of the Khedive and the Council of Ministers. The usual names for a legislative measure in Egypt are a Law or a Decree, and for all intents and purposes the two terms may be accepted as synonymous; generally speaking, the term Law is given to the more important measures. These Laws or Decrees are introduced in the Council of Ministers by the Minister interested. After they have been drawn up by the Consultative Committee of Legislation[1] the Council discuss, propose amendments, and vote on the proposed law. If it is accepted by a majority, and is one which should be referred to the Legislative Council, it is sent to the Council that they may discuss and vote on it. The law then returns to the Council of Ministers, who consider, although they are not bound to accept, the amendments proposed by the Legislative Council. After the law has been put in its final form by the Ministers it is submitted to the Khedive for his signature, and is countersigned by the President of the Council of Ministers and the Minister or Ministers whose Departments the law affects. The law

sembly were sent, *immediately* after such meeting, to all the principal Egyptian papers. A short note of the most important measures passed by one of these bodies at one of its meetings sometimes appears in the local papers; but this note does not contain any account of the provisions of the measure or the arguments put forward in support of it. An official summary appears in the Official Journal months after the meeting. (Thus the official account of the meeting of the Legislative Council of 27th August 1906 appears in the Official Journal of 22nd December 1906.) These summaries are far too short, and give only the amendments proposed and not the arguments. They also appear long after interest in the measure has ceased. When a Decree is finally passed it appears in the Official Journal, but the local press seldom, if ever, give an account of it in their issues. Of course it would be impossible to allow the representatives of the press to attend the meetings. Egyptian journalism, with very few exceptions, is only passing through the earlier stages of its education, and is far too irresponsible and untrained to be trusted to give an accurate account of the proceedings.

[1] The Consultative Committee of Legislation was reorganised by the Decree of 17th May 1902. It consists of the Minister of Justice, the Judicial Adviser, the members of the Comité du Contentieux de l'Etat, and the Director of the Khedivial School of Law. The Ministry proposing the Law may nominate a delegate to represent it. Article 2 states its duties: "Every project of a Law, Decree or Regulation which is of general application should be submitted to the Consultative Committee of Legislation for examination; its rôle should be simply to draft the legal form of the project and to put its text in harmony with existing legislation."

is then promulgated by being inserted in the Official Journal. In the case of Laws which do not require to be referred to the Legislative Council, as soon as they have been approved by the Council of Ministers they are submitted to the Khedive for his signature. Laws and Decrees are signed by the Khedive and countersigned by the President of the Council of Ministers and the Minister or Ministers whose Departments are affected by the new legislation. There is another method of legislation which, although irregular in form, often effects important changes. It is by a Decision of the Council of Ministers.[1] These Decisions may be in the form of an interpretation of an existing Law or Decree, as in the case of the Pension Law of 1883,[2] or by the announcement of the Procedure which the Council intends to follow in carrying out its legal powers. As an instance of the latter, the Commercial Code gives certain powers to the Council of Ministers in reference to companies. As a consequence some important parts of the Company Law of Egypt are to be found in a Decision of the Council of Ministers,[3] and not in the Commercial Code. This Decision announces the conditions which must be fulfilled by a Limited Liability Company before the Council of Ministers will advise the Khedive to grant the Firman necessary before such company can be constituted in Egypt. The Government by granting the Firman does not guarantee the company in any way; it simply states that certain formalities have been complied with. The system was probably adopted from some French regulation which is now obsolete. The reason for proceeding in this manner—by a Decision of the Council of Ministers instead of by a Decree—was to obviate the necessity of having to submit the change for the approval of the Powers before it could be made to apply to foreigners. Had the code been directly amended by Decree the approval of the

[1] In Egypt the French, and not the English, practice is followed in regard to the form of the Laws passed by the Legislature—that is to say, only the outline of the Law is given, and the details require to be filled in by the Departments affected. These details are filled in and issued by a Ministerial Order signed by the Minister. As a rule, these Ministerial Orders are immediately executory, but sometimes the original Decree requires that they should be submitted to the Council of Ministers, who accord their approval in a Decision of the Council of Ministers. For example, the Councils of Discipline organised by a Ministerial Order of the Minister of Finance are approved by a Decision of the Council of Ministers of 17th September 1903.

[2] Decision of the Council of Ministers, 19th May 1901.

[3] Decision of the Council of Ministers, 17th April 1899.

Powers would have been essential. The legal effect of the Decision of the Council of Ministers rests on the article of the code quoted; but in reality it is an act of legislation by the Council of Ministers.

The Khedive has, in reference to two exceptional matters, the power to legislate directly, without the concurrence of the Council of Ministers being necessary. These exceptions are the El-Azhar University and Wakfs, both of which have a specially Moslem character. This form of legislation is called a Superior Order.

The Laws introduced by the Egyptian Legislature are, generally speaking, on the same lines as the original Mixed Codes or the modifications subsequently agreed to by international convention. When the Native Courts were reorganised in 1883, codes were prepared after the model of the Mixed Codes.[1] There are, however, a number of differences in detail between the two sets of codes, the Native Codes being founded, in many instances, more directly on Moslem Law. The Penal Codes are, of course, entirely distinct. The Native Codes are: the Civil Code, the Commercial Code, the Code of Maritime Commerce, the Code of Civil and Commercial Procedure, the Penal Code, and the Code of Criminal Procedure. These codes have been considerably modified by subsequent Decrees,[2] and the Penal and Criminal Procedure Codes were entirely remodelled by the Decree of 15th April 1904, which in turn has been modified by the introduction of the Assize Courts, the Markaz Courts, and Children's Courts.[3] A commission is at present occupied in preparing modifications in the Code of Civil and Commercial Procedure. The policy of the Egyptian Government has been to preserve uniformity, as much as possible, between the two systems of law—that applying to native subjects, and that applying to foreigners resident in Egypt. The arguments in favour of this policy are obvious; but it has undoubtedly this objection, that very necessary and beneficial legislation is frequently postponed and sometimes abandoned because of the difficulty experienced in obtaining the consent of the Powers to its application to foreigners. An example

[1] Khedivial Decree, 14th June 1883, reorganised the Native Courts, and a Decree of 13th November 1883 introduced the new codes to be applied by these Courts.

[2] For example, the Decree of 23rd March 1901 modifying the Law of Preemption, Articles 68 to 75 of the Civil Code, and the Decree of 3rd September 1896 unifying the system of ownership in land.

[3] Decree, 14th Jan. 1905. Decree, 20th Feb. 1904. Ministerial Orders, 28th March and 6th May 1905.

is given of this in the history of the Law of Expropriation for purposes of public utility. As early as 1893 an Expropriation Law was drafted and approved by the Egyptian Legislature, the Law being intended to apply alike to natives and foreigners, a provision which seemed essential under the circumstances. The proposed Law was then submitted to the Powers for their approval; but as this approval could not be obtained the Law was promulgated in 1896 as applicable to native subjects alone.[1] As a large part of the land or house property in Egypt is either owned by foreigners, or foreigners have an interest in it as tenants or creditors with a right of hypothee over it, the benefits of this Expropriation Law have been very greatly reduced, and the development of the country by the introduction of necessary improvements has been very largely and needlessly interfered with. The Law was again submitted to the Powers for their approval in 1904, and the International Commission has now accepted an Expropriation Law which is to apply to foreigners, but it differs in certain essential points from the Decree of 1896.[2] There can be no doubt that the privilege of Legislation in its present form is very often contrary to the best interests of the Egyptian people. It is equally clear that it requires considerable modification before it is entirely acceptable to the foreign residents in Egypt, whose interests in the country are increasing so largely year by year. The statement which has been given of the present Egyptian Legislative Institutions should help to the consideration of the problem what lines these modifications should take. The question of Reform is again before the people of Egypt, and is understood to be under the consideration of the Powers. A statement of the proposed reforms as outlined by Lord Cromer will be given in the next chapter.

[1] Decree of 17th February 1896.

[2] The Expropriation Law for Foreigners was promulgated on 24th December 1906, and the Decree of 1896 is being amended so as to make the provisions of this Law apply also to natives.

CHAPTER XVIII

THE FUTURE REFORM OF THE CAPITULATIONS

THE Capitulations are essentially commercial in their origin, and their object is to encourage foreign merchants to reside within the territories of the granter's State, and thereby advance not only their own interest, but also the interests of the subjects of the State. The privileges and immunities granted to foreigners should, therefore, include only those which are essential and necessary to the peaceful residence of foreigners within the State, and all those which are not necessary, in this sense, should be swept away. Further, this sweeping away of the unessential privileges will probably prove to be to the advantage of the foreigner as well as of the local subject, since privileges have, when the actual circumstance of their grant have radically changed, a tendency to develop into something that is not fully advantageous to the persons who are supposed to be their beneficiaries. The Egyptian Capitulations as they exist to-day are very different from the original grants made by Saladin and the Khalifs of Egypt. That they should be different is only right and proper, as the necessity of the grants must vary proportionately with the advance of civilisation in Egypt. Without the privileges accorded by Saladin, foreign commerce could not have then existed, and its advantages would have been lost to the inhabitants of Egypt. Although the conditions have greatly altered, it remains as true to-day as it did eight hundred years ago, that certain guarantees are necessary before foreign commerce can flourish. The question is to determine whether the Government and Administration of Egypt naturally afford these guarantees, or whether some special system must be built up in order to secure the foreign merchant, and thereby encourage foreign commerce and develop the country. The conditions which prevail in Egypt to-day are essentially different to those prevailing at the time of Saladin; there ought, therefore, to be a proportionate change in the privileges accorded to foreigners

resident in Egypt. The privileges have, in fact, been very greatly changed: some new rights have been granted, the character of all has been altered by the changes in the conditions of life, and yet others have been greatly modified in view of the introduction of more modern institutions. The negotiations which culminated in the Reform of 1876 took into consideration the changes and developments which had occurred in Egypt, and the result was the modification of the system in so far as this was considered safe in the interests of foreigners and local subjects. The political and economic situation in Egypt was not, at that time, such as to inspire the Powers with unlimited confidence in its Government and Administration; the modifications in the Capitulations which were consented to, were, in consequence, only partial and temporary. Many of the derogations to the sovereign rights of Egypt still exist; but the development of Egypt in recent years, which has become proverbial, has caused the question to be reopened whether the better system of administration and the greater financial stability of the country do not justify a further modification of the privileges and immunities enjoyed by foreigners.

As late as April 1904 the British Government declared that the Capitulations, as modified by convention or custom, should not be altered, and that "the time was not ripe for any organic change." This declaration was made in the Convention between England and France of that year (8th April 1904); and the undertaking given by the British Government in that agreement was that: "His Britannic Majesty's Government, for their part, will respect the rights which France, in virtue of Treaties, Conventions, and usages, enjoys in Egypt." At the same time a similar engagement was made with the Governments of Germany, Austria-Hungary and Italy. The article is amplified in the covering despatch of Lord Lansdowne: "It is necessary that I should add a few words as to the other points in which the internal rights of sovereignty of the Egyptian Government are subject to international interference. These are the consequences of the system known as that of the Capitulations. It comprises the jurisdiction of the Consular Courts and of the Mixed Tribunals, the latter applying a legislation which requires the consent of all the European Powers, and some extra-European Powers, before it can be modified. In Lord Cromer's opinion the time is not ripe for any organic changes in this direction, and

His Majesty's Government have not, therefore, on the present occasion, proposed any alterations in this respect. At the same time, whenever Egypt is ready for the introduction of a legislative and judicial system similar to that which exists in other civilised countries, we have sufficient grounds for counting upon French co-operation in effecting the necessary changes."

Within a year of this Lord Cromer wrote in his Annual Report:[1] "I do not, on the present occasion, propose to develop any very definite or detailed plan for immediate action, but I am convinced that some serious modifications in the Capitulations will before long be almost imposed by the necessities of the local situation." There follows a weighty indictment against the present conditions, resulting from the Capitulations, not only from the point of view of Egyptian subjects, but of the Egyptian Government and of European residents. Reform, in the opinion of the Egyptian, should consist in "abolishing European privilege, and of assimilating the institutions whether legislative, executive, or judicial, which are applicable to all dwellers on Egyptian soil." This, however, "can obviously only be attained if Egyptian legislative, executive, and judicial institutions are brought up to the same standard of efficiency as that prevailing generally in the countries of origin of the various European colonists. Much progress has, indeed, been made of late years, but I should be failing in my duty to a people amongst whom I have lived for so long, and for whom I entertain so deep a sympathy, if I did not candidly state that the standard to which I have alluded above is as yet far from being attained." The Egyptian claim for this total abolition of the Capitulations cannot be entertained: "for some long time to come, special treatment to Europeans will be imposed by the necessities of the situation."

But "the rights conferred by the Capitulations are liable to abuse;" and these abuses are to the disadvantage of the foreigner. The rights of the Capitulations have been the means "of affording protection to the smuggler, the keeper of a gambling-hell, the vendor of adulterated drink, and their congeners." The problem for the English Diplomatic Agent at Cairo and the Egyptian Government is to evolve a scheme whereby the privileges of the

[1] Egypt, No. 1, 1905, p. 5.

Capitulations shall be preserved in so far as they are essential to the well-being of the country, yet, at the same time, all chance of abuse shall be rendered impossible in the future. The question "is by no means essentially British." "On the contrary, the question is essentially Egyptian, in the widest acceptation of that term, that is to say, it is one which concerns every dweller in Egypt, and all those who have dealings with Egypt, of whatsoever nationality or creed they may be." The Capitulations have been necessary in the past, "and have, on the whole, been conducive to the welfare of the country." They are still necessary to the welfare of the country, but they are at present accompanied by certain disadvantages, the most striking of which is the lack of any machinery possessed by the Egyptian Government wherewith to legislate for foreigners resident in Egypt. "Where Europeans are concerned, legislation has, in all important affairs, to be conducted by diplomacy. Fourteen separate Powers have to agree, not merely in principle but also in detail, before any proposed measure can become law. . . . So long as the present cumbersome and unworkable system of legislation exists it will be practically impossible to adapt the laws of Egypt to the growing requirements of the country."

The great demand of the foreigner at the present time is for the modification of his privilege of immunity from local legislation. As a State increases in civilisation the demand for new legislation increases; and in the present condition of Egypt there is a continual and increasing demand for legislation; but these new laws cannot apply to foreigners unless they have received the consent of fourteen Powers to every detail. This rule is absolutely universal, except in the case of such laws as only involve a fine of one hundred piastres, or a punishment of a week's imprisonment, in which case the consent of the General Assembly of the Mixed Courts is sufficient. It is seldom, however, that these penalties prove sufficiently deterrent, and the diplomatic method is alone left. Among the cases where the penalties of a police contravention are not sufficient deterrents is the case of a disorderly house kept by a foreigner, the authorities cannot act without the consent of the Consul of the foreigner; but, "when the consent has been obtained, and, after the lapse of some months, the establishment has been closed and the proprietor sentenced to a trifling fine, the establishment not improbably reopens with a nominal change of proprietorship. If the

establishment is a gambling-hell, a Consular representative must be present when it is raided; and the subordinate personnel of a certain number of Consulates cannot be relied on not to give a timely warning to the proprietor. If the establishment is a drinking shop, provided the quarter is a European one and has not been scheduled as exclusively used for residential purposes, it does, indeed, require a licence; but the local authority is bound to grant the licence to any person not provably disreputable. It unfortunately happens that at the present time there is a marked increase of rabies. Muzzling orders can, and probably will, be enforced. But the Sanitary Advisers of the Government are clear that an efficacious adjunct to such an order would be a moderate annual licence-tax on dogs; the Legal Advisers of the Government are equally clear that such a tax could not be effectively enforced as against Europeans."[1]

The professions which are ordinarily subject to Government regulations, although regulated to a certain extent by the Egyptian Government—for example, pharmaceutical chemists—are not as fully regulated as could be desired. "The material point is not so much that by the absence of proper control the public welfare is endangered, as that the respectable members of any given profession, whom the control would, in practice, leave untouched, are exposed to a form of competition from which, under a proper system of regulation, they would be free."[2] Industrial concerns and factories of different kinds are being established everywhere, and the majority of these are in the hands of foreigners; but there is no legislation for the protection of the health and lives of workmen, for the regulation of the hours of labour, for the employment of children, or for proper inspection. In regard to land, the foreigner is obliged to proceed by means of an action before the Mixed Courts if he wishes to lead water across a neighbour's land, or stop an interference with his water supply; while by the Canal Law the native landowner is entitled to use a much simpler and more economical procedure before the irrigation authority. Until the promulgation of the Decree of 24th December 1906 the Expropriation Law of Egypt only applied to natives, so that if the Government wished to expropriate property in which a foreigner

[1] Note by Mr. Brunyate, Khedivial Counsellor, on the working of the Capitulations, Egypt, No. 1, 1905, pp. 90 to 97.

[2] *Ibid.* p. 72.

was interested, and an amicable arrangement failed, the only procedure for settling the price open to the parties was by the lengthy and expensive procedure of an action before the Mixed Courts.

An illustration of the difficulty experienced by the Egyptian Government in obtaining the consent of the Powers to a modification of the law as affecting foreigners is given by the work of the International Commission, which has been sitting during the last three years. The Egyptian Government, by a Circular of 20th May 1903, proposed to the fourteen Powers concerned to renew the mandates of the Mixed Tribunals for a further period of five years, and at the same time proposed certain additions and modifications of existing legislation, following former precedents by appointing an International Commission to examine them. The Judicial Adviser, in his Report for 1903,[1] enumerates the proposals submitted by the Egyptian Government to the International Commission, and in that Report and in the Report of the following year enters,[2] with considerable detail, into the necessity for the modifications suggested. The proposals were:—(1) Certain modifications in the Statute of Judicial Organisation relating to criminal prosecutions; (2) Procedure in the Court of Appeal for the hearing of cases involving the decision of disputed points of law; (3) a modification of the Mixed Penal Code, concerning the method of calculating the duration of sentences of imprisonment; (4) the question of Gambling Transactions in "Futures;" (5) Land Registration; (6) Bankruptcy, modifications in the law of compositions to avoid bankruptcy (Concordat préventif); (7) a law of Expropriation for purposes of public utility; (8) the question of the maintenance of the Court of Mansourah in its present position, or its suppression and the substitution for it of a Summary Court. The last proposal was declined by a majority of the Commission; and (4) and (5), in spite of their great importance, have not yet been settled; (3) was accepted without amendment, as was the first part of (1); while the Egyptian proposals in (2) were not fully accepted; in fact, the Judicial Adviser shows clearly his unfavourable opinion of the accepted reform, and doubts the benefits which may be expected from it. He says:[3] "It is to be hoped that it may

[1] Judicial Adviser's Report for 1903, pp. 22 to 26.

[2] Judicial Adviser's Report for 1904, pp. 47 to 70.

[3] Judicial Adviser's Report for 1904, p. 5. This question is fully discussed above, chap. xv. p. 217.

prove a palliative, in a certain degree, for the evils referred to; but it is most regrettable that it should have proved impossible to devise any scheme for remedying the contradictions and divergences in the Tribunals of First Instance, sitting in appeal." Only two of the four proposals made by the Government in reference to the Concordat préventif were accepted; while the Law of Expropriation suffered very radical alterations at the hands of the Commission. Summing up the work of the International Commission in March 1906, the Judicial Adviser refers[1] to the five projects which had secured the assent of the Commission, and adds: "The only one of these laws which can be considered as of anything approaching to first-rate importance is the last, relating to expropriation, and even this project has undergone such important modifications at the hands of the Sub-Commission that grave fears are entertained lest its practical utility may have been materially impaired. Considering that the Sub-Commission has now sat uninterruptedly (save for the summer vacations) for two years and held forty-four sittings, the above result cannot be considered as other than extremely meagre."

The arguments in favour of some reform in the privilege of Legislation are thus very strong; they are, in fact, unanswerable. Some modification of the present system is essential, both in the interests of the foreign and the native population of Egypt. But what of the privilege of Jurisdiction as still enjoyed by foreigners? This privilege now includes: (*a*) The right of a foreigner when suing a foreigner of another nationality, or a native subject, to have his case heard by the Mixed Tribunals; (*b*) the right of foreigners of the same nationality to have their disputes tried by their Consul, except when the dispute is in reference to immovable estate, in which case the Mixed Courts are competent; (*c*) the right of foreigners to have all cases of personal statute tried by their Consuls, the rule "Actor sequitur forum rei" applying when the parties are of different nationality; and (*d*) the right of a foreigner accused of a crime or delict to be tried by his Consul, and when accused of a breach of a police law to be tried by the Mixed Courts. In the first place, the Egyptian natives object to the continuance of the Consul's jurisdiction, especially in cases of crime and delict. The situation as it affects the foreigner, or as it is likely to affect him in the near

[1] Judicial Adviser's Report for 1905, p. 25.

future, is clearly stated by Mr. Brunyate in his Note.[1] First, in regard to the criminal jurisdiction of the Consuls: "It appears not unlikely (though it is far from certain) that the mining industry, the beginnings of which have been established in the eastern desert, should grow to moderate proportions. In that case there will shortly be a considerable European population, not of the most orderly character, in a part of Egypt far removed from Consuls and Consular jurisdictions. The powers of arrest already possessed by the police, if benevolently interpreted by the Consular authorities concerned, should be sufficient to prevent any serious outbreak of deliberate lawlessness. But at least a substantial amount of petty criminality must be looked for. There will, of course, be two methods of dealing with it. An offender may be prosecuted before his Consular Court, probably in Cairo—a procedure calculated to cause the maximum of inconvenience both to accused persons and to mine managers and others responsible for the prosecution. The alternative most likely to be adopted—and it may be remarked that it has already been resorted to—is that a workman who was inclined to be troublesome would be summarily dismissed, because the risk of keeping him would be too great. Even assuming that any Judges who would be appointed by the Egyptian Government would be inferior in capacity to the average Consular Judge, it is sufficiently obvious that, whether from the point of view of police order or from that of petty offenders, some system of judicial officers, responsible to the local Government, with limited criminal powers, would be preferable to either of the alternatives above mentioned."

The case in reference to civil matters is discussed by Mr. Brunyate[2] in reference to the inconveniences of the Mixed Courts. "As regards civil jurisdiction, the only material consideration would appear to be the convenience of suitors. It is, at present, a serious inconvenience for a European in Upper Egypt that he cannot recover a small debt without bringing an action in Cairo. Already there is considerable evidence of a tendency to turn the difficulty by means of fictitious transfers to local subjects and to use the Native Tribunals on the spot for the collection of such debts."[3]

[1] Egypt, No. 1, 1905, Inclosure 1, pp. 90 and 91.

[2] *Ibid.* p. 95.

[3] The same practice of fictitious assignments was once a favourite method by which natives escaped the jurisdiction of the Native Courts, and had their suits tried by the Mixed Tribunals. See above, p. 222.

There is little doubt that if Nubar Pasha's proposals had been made to the Powers, under conditions similar to those which exist to-day, they would have been more fully accepted, and the Mixed Courts would have been given jurisdiction in all cases of delict and crime committed by foreigners. It is doubtful, however, whether this solution would meet the difficulty as it is presented to-day. The Mixed Courts only sit at Cairo, Alexandria and Mansourah, and with the great development of Egypt these centres are at some considerable distance from places where many foreigners are now congregated. The proposal to reduce Mansourah to the status of a Summary Court, which the International Commission of 1904 failed to accept, entailed the institution of another Summary Court at Assiut; in other words, the Egyptian Government fully realise the necessity of new judicial centres being created; but this policy would involve the multiplication of Mixed Court judgeships. It appears very much more logical that, if any change be made, the transfer of penal jurisdiction should be from the Consular to the Native Courts. The new system of Circuit Courts, with the speedier carrying out of justice, is more likely to commend itself to the foreigner, especially as there is now so strong, and so able, a European element within these Courts. The practice which is apparently coming into existence in reference to civil jurisdiction should support this argument. In regard to the civil jurisdiction of the Mixed Courts, if not also of the Consular Courts, the convenience of the parties themselves suggest that either the Native Courts, with a stronger European element in the Courts of First Instance, should be given competence, or at least that it should be possible for the parties themselves to elect to have their suits tried by the Native Courts. Mr. Brunyate[1] seems to favour some such scheme as this: "The logical course would be to allow an action to be commenced before the nearest Tribunal (Native or Mixed), but to reserve the right to the defendant to require the transfer of the action to the Tribunal competent according to the now existing rules, provided that he moved to that effect at the outset of the proceedings. Where the action arose out of a contract, the parties might be left free to choose, by the contract itself, the jurisdiction they preferred. Such a provision need not extend to Government contracts; it is, in fact, most convenient for the Government to be

[1] Egypt, No. 1, 1906, Inclosure 1, p. 95.

sued in Cairo." There remains only the jurisdiction of the Consular Courts in questions of Personal Statute. Should the Egyptian Government desire to abolish entirely the foreign Consular Courts in Egypt, no difficulty should be experienced in settling this question. There are Judges on the Bench of the Mixed Court representing all the Powers which have Consuls. The Judge, or one of the Judges, of the same nationality of the parties suing, when the foreigners were of the same nationality, could decide the case. Or if the parties were of different nationalities, either the Judge of the defendant's nationality or a Commission, consisting of the Judges of both nationalities involved and an independent Judge, might act as the court in such action. The Consuls would thus be left with only those powers which they exercise in European States. According to Lord Cromer's suggestions, the power exercised in reference to the privilege of inviolability of domicile will be transferred to some European Magistrate attached to the Egyptian Courts. There would therefore remain, from among the special powers at present enjoyed by Consuls in Egypt, only their power of expulsion.

There is thus a very strong indictment against the present position of the privileges of the Capitulations, not only from the point of view of the Egyptian Government and the native population, but also from that of the law-abiding European, especially if he is engaged in commerce. Reform is demanded as much, if not more, by the European residents in Egypt as by the natives. What are the proposals, if any, which have been made for this Reform? Lord Cromer's Report for 1905[1] outlines the Reforms suggested by him: "The first point which calls for consideration is whether the existing Legislative Council and Assembly, which are now only empowered to deal with laws applicable to local subjects, should be reconstituted in a sense which will enable them to take part in legislation applicable to all the inhabitants in Egypt irrespective of nationality; or whether, on the other hand, these institutions should be left intact, and another Council created which will be empowered to deal solely with laws affecting Europeans. I should be prepared, should the necessity arise, to develop fully the arguments for and against these alternative plans. Here I need only say that a very careful consideration of this branch of the subject has led me to the conclusion that it would

[1] Egypt, No. 1, 1906, pp. 1 to 8.

not be possible to devise any scheme for an amalgamated Council which could, with any prospect of its acceptance, be presented to the Powers, or one which would not, whether from the European or the native Egyptian point of view, be open to the strongest objections. I would propose, therefore, to make no alteration in the constitution or the functions of the existing Legislative Council and Assembly, and to create a separate Council composed wholly of subjects or protected subjects of the Powers which were parties to the Treaties under which the judicial reforms of 1876 were accomplished. Legislation proposed to this Council by the Egyptian Government, approved by a majority of that body, and promulgated by the Egyptian Government with the assent of His Britannic Majesty's Government, would have the same force and effect as if it had received the assent of the Treaty Powers—that is to say, it would be binding on all foreigners resident in Egypt."

The Egyptian legislative system, as described in a previous chapter, was seen to be full of anomalies. If a body of foreigners were added to the Legislative Council, the anomalous character of that institution would be still further increased; while, on the other hand, to have used the General Assembly and added to it in this manner would not have served the interests of legislation unless its legislative powers, as at present constituted, were very greatly increased. Nor would the Powers have been satisfied with the very negative character of the law-making powers at present exercised by members of the Legislative Council. At present the Powers are in the position of being able to veto any law which the Egyptian Government may desire to make applicable to foreigners, and it would be a very poor bargain indeed for them to give up this privilege in exchange for the very negative right to be enjoyed by a very small number of their subjects of offering advice to the Egyptian Government, without power to enforce their wishes or carry an amendment against the opinion or wishes of the Ministers. But supposing a scheme had been devised by which an amalgamated Council was formed, and it had been accepted by the Powers, it is evident that a very large number of problems would arise in reference to the internal organisation of the affairs of the Council, and in the actual carrying on of its business; questions which would have been apt to cause grave political difficulties—perhaps even friction between the different sections of the Council. The

problem as it presently stands is fraught with sufficient difficulties. But law-making will not be the only duty to be placed in the hands of the new Council, there will also be some control over the finances of the State; and it cannot be imagined that the Powers would sacrifice the privilege they at present enjoy under the Capitulations, that their subjects should not be taxed without their consent, in exchange for the very insignificant financial powers of a member of the Legislative Council. Much stronger guarantees than these will be necessary before the Egyptian Government can hope to induce the Powers to surrender their privileges, even if these privileges do not always work for their good. Some system more in accordance with the institutions existing in the countries of origin of the European colonists is absolutely essential. Another policy might be to level up the Legislative Council to the standard of a European Legislative Chamber; but here we are met with all the difficulties so ably pointed out by Lord Dufferin, and especially by the question: Are the Egyptians at the present moment prepared for a further instalment of constitutional principles, and an instalment sufficiently great to satisfy the Powers? These are among the more obvious difficulties which stand in the way of the adoption of a scheme for an amalgamated Council. It would be practically impossible to devise any scheme of this nature which would be acceptable to the Powers; or which would be acceptable to the European resident in Egypt or the Egyptian people.

The other alternative is to create a purely European Council, which shall exist side by side with the Egyptian Legislative Council, but which shall only consider laws that are intended to apply to foreigners. The members of this Council,[1] according to Lord Cromer's suggestion,[2] are to be "subjects or protected subjects of the Powers which were parties to the institution of the Mixed Tribunals." They are to be of two classes, either elected or nominated. There are to be from twenty-five to thirty in all, and of these the majority are to be elected members. The nominated members are to include a certain number of Egyptian Government officials, the reason for this being that "it is very necessary to provide that the Egyptian view of any measure under the con-

[1] The official languages to be used in the Council are to be English, French and Italian; "but written opinions may be recorded in any other language."

[2] Egypt, No. 1, 1906, p. 3.

sideration of the Council should be adequately explained. This can only be assured by the presence in the Council of a certain limited number of European officials in the service of the Egyptian Government. Most, though not necessarily[1] all, of these officials would be of British nationality." The number of "official" members is, however, to be limited; there will, therefore, be a certain number of "unofficial" nominated members, presumably representatives of the commercial and industrial population. Judges who are "irremovable" from office are not to be included among "Government officials." The method of electing the elected members is a question which will cause considerable difficulty; but certain International Councils exist in Egypt which should offer models; the most important of these is the Municipality of Alexandria,[2] which consists of twenty-eight members, a number similar to that suggested by Lord Cromer for the International Legislative Council. The twenty-eight members of the Alexandria Municipal Council are divided into four classes, six being *ex-officio,* eight nominated by the Government, six elected by the ordinary electors of Alexandria,[3] and eight by the import and export merchants and the owners of house property. We may say that there are two classes, the first non-elected, and the second elected; the former are subdivided into two classes, the *ex-officio* members, and the nominated members; the latter are also divided into two classes, according to the character of the electors. The scheme for the International Legislative Council might very well follow the same lines: first, the nominated members, divided into the official and the non-official members; secondly, the elected members, a certain number of whom might be elected by the individual electors, and the remainder by foreign corporations, such as the different Chambers of Commerce or analogous bodies. There is an important condition attached to the Decree inaugurating the Municipality of

[1] "Necessarily," because the majority of the foreign higher officials attached to the Egyptian Government are English.

[2] Other Mixed Municipalities, with lesser powers than that of Alexandria, have been constituted in other of the larger towns; thus Mansourah received a Mixed Municipality in 1896, the Fayoum in 1902, Tantah and Zagazig in 1905, and Damanhour in 1906.

[3] The ordinary electorate for municipal purposes consists of all persons over twenty-five years of age occupying a house in Alexandria, or its suburbs, registered at an annual rental of £E.75. Certain persons are disqualified, such as members of the Diplomatic or Consular Services, persons dismissed from Government services for certain offences, persons guilty of certain offences, and bankrupts or interdicted persons. The candidates must be qualified electors.

Alexandria, and that is that not more than three of the elected members may be of the same nationality. A reserve of the same nature should be made in the case of the International Legislative Council; and it appears from the forecast that the Egyptian Government intend to accept the principle: "the maximum number of elected members, who may be of any single nationality, is to be fixed by Treaty."

Lord Cromer very wisely deprecates "the idea of distinct representation by nationality. To be more explicit, I do not think that it would be desirable to allow the British community to elect a certain number of British members, the French a certain number of French, and so on." If a system like this was adopted there would be difficulty in fixing the proportion of members to be allowed to each country, and also in deciding the basis on which the allotment was to be made, whether according to population or trade.[1] Lord Cromer wisely desires to exclude all political interests, "and to take purely local interests." The rule, which is of general application, and which requires the Consuls of the different States to keep a register of their nationals, would be of assistance in drawing up electoral lists; if in addition to this foreigners were required to give their Consuls a statement as to whether they were owners of immovable property of a certain value, or occupiers of houses at an annual rental above a certain minimum, the arranging of these lists would be greatly simplified.[2] The electors for the Municipality of Alexandria require

[1] A single illustration will at once show the difficulties which would arise "if the principle or representation by nationality were adopted." According to the last census, made in 1897, the Greeks constituted 33·94, and the Germans only 1·14 per cent. of the entire European population of Egypt. On the other hand, in 1904 the import and export trade of Germany amounted to £E.2,884,000, and that of Greece to only £E.281,000. It seems impossible to decide in a case of this sort whether population or trade should be taken as the basis of representation.

[2] The system of organisation adopted by the French colonies in the Levant offers a model on which a system of electoral divisions might be established in Egypt. In each French colony there is a National Assembly and two Deputies. The National Assembly consists of the French merchants of the colony, the Consul being president; artisans and clerks are not included. This assembly is convoked on certain occasions only, when the Consul considers it necessary, or when a deputy requires to be elected. There are two deputies, distinguished by the titles First Deputy and Second Deputy of the Nation, each being elected for two years, but the First Deputy is always elected a year senior to the second. After his two years are passed he resigns, and the Second Deputy becomes the First Deputy, and a new one is elected. The elections are by secret ballot, and the candidates

to be over twenty-five years of age, and occupy a house in Alexandria or its suburbs, registered at an annual rental of £E.75; this qualification should offer a criterion to work on. There might be so many members for Cairo and for Alexandria: one or more to represent certain of the more important towns, though not necessarily those specially mentioned in the Organic Law;[1] and a certain number for the provinces, several provinces being linked together for this purpose, since the majority of foreigners resident in Egypt are congregated in the large towns.

The duty of the International Legislative Council would be to consider and vote on all Laws or Decrees which the Egyptian Government intended should apply to foreigners, and to vote on all proposals for new taxation which would affect foreigners. The proposed Law or proposed tax which is to be submitted to the Council would, as a general rule, have already been considered by the Council of Ministers, and have been adopted by them as applicable to local subjects. This must logically be the case, since it is the very natural policy of the Egyptian Government to make the law which applies to natives as similar as possible to the law which is applied to foreigners resident in Egypt. We may take the history of the Expropriation Law as an example of this policy. An Expropriation Law was in 1893 drafted, and was accepted by the Ministers as applicable to natives, but the Government did not wish to promulgate it until the same rules should be accepted by the Powers as applicable to foreigners; the Powers, however, would not accept the law, and the Decree of 17th February 1896 was promulgated, introducing a Law which should apply to local subjects only. This Law was again submitted to the International Commission in 1904, and was accepted by them subject to certain amendments[2] which rendered the modification of the Law of 1896 necessary; a new Decree was therefore promulgated on 24th April 1907 in terms identical to the Law accepted as applying to foreigners.

must be twenty-five years of age, must have resided in the Levant for at least two years, be a merchant, and never have been bankrupt. Any candidate fulfilling those conditions may be proposed. The elections take place in December of each year, and the new Deputy enters office on the 1st of January.—French Ordinance of 1781; see Du Rausas, vol. i. pp. 393 to 396.

[1] Thus the towns of Mansourah, Tantah, Zagazig, and others have acquired considerable importance within recent years; while Ismailia, for instance, has ceased to have any importance.

[2] Decree, 24th Dec. 1906.

Undoubtedly the existence of two distinct Legislatures in the same country will be "apt to raise difficulties." There is, however, one very considerable safeguard since no proposed Law, although accepted by the majority of the International Council, will be a Law binding on foreign residents until it has been promulgated by the Egyptian Government; and it cannot be promulgated until it has received "the assent of His Britannic Majesty's Government." The Council will be in the position of the present International Commissions, their decisions are not final, the consent of the several Governments of the Powers is necessary; but in future the assent of the British Government alone is to "have the same force and effect as if the Law had received the assent of the Treaty Powers—that is to say, it would be binding on all foreigners resident in Egypt."

There are certain subjects which are to be "absolutely excluded from the purview of the Council. The most important of these are the Suez Canal Convention of the 29th October 1888, and the Law as to the Public Debt of the 28th November 1904, in so far as it relates to the rights and guarantees of the bondholders and the powers of the Public Debt Commission. As regards commercial relations, it will be desirable to lay down, in any arrangement made with the Powers, that the Egyptian Government cannot derogate from the provisions as to freedom of trade, or as to the rates at which import, export, and transit dues are levied in virtue of any commercial convention concluded, or hereafter to be concluded, with foreign Governments." Similarly International Quarantine Regulations will continue to form the subject of diplomatic arrangements; but the preservation of Egypt herself from the introduction of disease from abroad will be within the functions of the International and the Native Legislatures of Egypt. Other questions may arise later. The limitations already mentioned must not therefore be taken as restrictive: "Thus, no legislation could be permitted which would interfere with the liberty of action now possessed by all foreigners to establish schools in Egypt. It might be thought desirable to lay down specifically that under no circumstances could foreigners be made liable to military conscription or to the '*corvée*.' Legislation which deals with questions of nationality might be expressly excluded from the purview of the Council. The status of religious Societies may require special treatment. Engagements

taken to various Powers—such, for instance, as the appointment of a French *savant* to be Director-General of Antiquities (Article 1 of the agreement of the 8th April 1904)—might require ratification."

It must be remembered that Lord Cromer's outline was never intended by him as a final exposition of his policy,[1] or as the statement of the actual proposals he intended to submit to the Powers for their acceptance. The procedure which would require to be followed in the event of the Egyptian Government deciding on a further reform of the Capitulations would be that "the Egyptian Government, after consultation with His Majesty's Government, should address a Circular to the Powers asking them to consent to certain changes in the existing laws." But Lord Cromer adds: "The issue of any such Circular would, however, I venture to think, be for the present premature." His outline was only intended to encourage discussion, and help to make clear and articulate "the views both of the leading Egyptians and of the European residents in Egypt, of whatsoever nationality or creed they may be." Certain important public bodies, which represent the foreign commercial population in Egypt, have communicated their opinion that the present régime is in need of reform, and have expressed a hope that the Powers will be able to devise some means by which the delays in legislation may be obviated. The representatives of the Bar in Cairo and Alexandria have also declared in favour of reform, provided sufficient guarantees against arbitrary government are maintained. On the other hand, Lord Cromer's scheme has met with a considerable amount of adverse criticism, but in regard to this it is clear that the writers have not thoroughly understood the proposals. Their principal effect on a certain class of Egyptians has been merely to increase the demand for fuller Constitutional Government, but no indication of the nature of the extension or of the future treatment of foreigners is given.

All Judicial Reform, according to Lord Cromer's outline, is to be reserved for the International Legislative Council to carry out; but the policy to be followed by them is foreshadowed by Lord

[1] "I am not even now prepared to submit a plan elaborate in all its details, but I may go a step further than previously in the direction of indicating the general nature of the reform which, as it would appear to me, the circumstances of the case demand. This is what I now propose to do."—Egypt, No. 1, 1906.

Cromer. The judicial work of the Consular Courts is to be taken from them and given to a new court to be established by the International Council. This new court would appear to be the present Native Court transformed and expanded. The Mixed Courts are to disappear when the reformed courts are prepared to take over their work; and the present Mixed Court Judges "are to be entitled to retain their posts, and their services are to be available" in the new courts. "The fundamental principles of the existing civil and criminal legislation" are not to be changed; "certain reservations are to be made as regards the freedom of action of the new Legislature in the matter of criminal legislation;" and "the principle of the irremovability of Judges is to be maintained."

According to the present system the courts in Egypt may be divided into two classes—the Courts of Personal Statute, and the Courts of Real Statute. The former include the Moslem Courts, the Courts of the non-Moslem Communities and the Consular Courts; the latter include the Mixed Courts, the Native Courts and the Consular Courts. It would appear, from the indications given by Lord Cromer, that it is intended to do away with the jurisdiction of the Consular Courts, whether in Personal[1] or Real Statute, and amalgamate the present Mixed and Native Courts into a single Territorial Court, to which should be given competence in all cases which formerly were within the jurisdiction of the foreign Consuls. If this reform were adopted there would be three systems of Judicial Tribunals in Egypt: First, the Moslem Courts; secondly, the Courts of the non-Moslem Religious Communities, each having competence in all cases of Personal Statute in which the members of their Religious Community were interested; and, thirdly, the new Territorial Courts, having jurisdiction—in the first place, in all Civil and Commercial Cases, other than questions of Personal Statute, arising between residents within the territories of Egypt, whether natives or foreigners, and whether of the same nationality or not; in the second place, in all criminal actions, whatever the nationality of the accused; and, in the third place, in all cases of personal statute in which the parties were foreigners. The result of this reform, if carried into effect, would, from the point of view of the foreigner, be to take away from him what remains of his privilege

[1] See, however, Lord Cromer's Report for 1906, *infra*, p. 323.

of jurisdiction. Already in civil and commercial cases, where he is in dispute with a member of another nationality, his suit is heard by an Egyptian Court, and it is only when he is a party to an action brought by or against a fellow-countryman, or an action of Personal Statute, or when he is accused of a crime or delict, that his ancient privilege of jurisdiction applies. These last remnants of privilege are, it is suggested, to be taken from him. Lord Cromer does not make any special reference to the change of system in so far as it eoneerns Civil and Commercial Cases, or cases of Personal Statute. Provided the Egyptian Courts have a strong leaven of European Judges, no difficulty should be experienced in reference to civil and commercial actions, and the jurisdiction of the courts would be only limited in aecordance with the ordinary principles of International Law. That it is intended that there should be this European element may be gathered from Lord Cromer's statement that the services of the present Mixed Courts Judges shall be "available" in the new courts. Actions of personal statute arising between foreigners might be heard by the new Egyptian Tribunals, and, if a special Commission or Court is formed, consisting entirely of foreign Judges of the new Tribunals, no great difficulty should be encountered in relation to these important cases. If, for instance, it were possible to provide that the Court or Commission should consist either of a single Judge of the defendant's nationality, or, at least, when the parties were of different nationalities, of three Judges, two being of the same nationality as the parties, and the third of a neutral nationality, the position of foreigners, although modified, ought not to suffer by the change.

In reference to the criminal jurisdiction of the new courts Lord Cromer makes certain very important provisos. The new courts are to have full and exclusive competence in reference to all penal offences committed by persons within the territories of Egypt in accordance with the ordinary rules of Private International Law, whether these offences are crimes, delicts, or poliee contraventions; but if the accused is a foreigner he is to have certain privileges. In the first place, he is entitled to have his case heard by a single foreign Judge, or by a court of which three-fifths of the members are foreigners, before any sentence of imprisonment or other more severe punishment can be finally

passed upon him; and until he has had "the opportunity of causing his case to be submitted to such Judge or Tribunal as aforesaid" he shall have "the option of bail." Secondly, a sentence of death shall not "be carried into execution until one calendar month after the notification of such sentence to the Representative in Egypt" of the State of which he is a subject; and that if such Representative make a request within that period that the sentence be commuted to one of penal servitude for life, it shall be so commuted. Thirdly, the warrant of arrest must be issued by a Magistrate who is a foreign subject; and search warrants or similar process, "the execution of which involves the entry upon premises for access to which Consular intervention is necessary under the Capitulations," must be issued by a foreign Magistrate, or with his authorisation; and the execution itself must be "carried out in the presence and under the direction of a police officer or officer of the court who is the subject of a Treaty Power." The execution of a judgment must also be carried out "in the presence and under the direction of" a foreign officer of police, or foreign officer of the court. Lastly, prisons in which foreigners are confined are to be open to the inspection of foreign Consuls. "It appears to me," writes Lord Cromer, "that, with these reservations, the power to pass criminal laws applicable to Europeans might safely be vested in the new Council, acting with the assent of the Egyptian and the British Governments."

The actual position at present is that there is a very strong opinion in favour of a further reform of the Capitulations, and that this opinion is shared by the Egyptian Government, the Egyptian native subjects, and the foreigners resident in Egypt. The actual extent of the reform has not been settled, but an outline scheme has been foreshadowed by Lord Cromer, according to which an International Legislative Council is to be instituted to take the place of the present International Commissions, and that the decisions of this Council are to become law after they have been accepted by the British Government, acting as the representative of the Powers, and been signed by the Khedive on the advice of his Ministers. This scheme, or any alternative scheme, will be submitted to the Powers who consented to the Reform of 1876, and, if accepted by them, will be embodied in a Treaty. The institution of this new system will have the result

of completely modifying the privilege of legislation at present applying to foreigners; but it is hoped that the change will prove more beneficial to foreigners than the present scheme. The duties of the new Council will refer to legislation and taxation; and it is intended that one of its first acts shall be the further modification of the privilege of jurisdiction, and incidentally of the privilege of inviolability of the foreigner's domicile. Thus the contemplated reform will extend to the privileges of legislation, taxation, jurisdiction, and inviolability of domicile; and, if the jurisdiction of the Consuls in personal statute is also threatened, the ancient privilege in regard to successions will also be modified to the extent that the law of the deceased will be applied by an Egyptian and not a national Court.

The general consensus of Egyptian and foreign public opinion is that the Capitulations, as they at present exist, no longer fulfil the essential condition of their origin. In origin they were intended to accord to foreigners those privileges and immunities which were essential to foreign merchants to insure the safety of their lives and the necessary security of their property and merchandise. The policy underlying the Capitulations was to encourage foreign trade, and thus benefit the country by assisting its development. Certain of the privileges accorded by the Capitulations at the present time, it is widely felt, do not fulfil these conditions, but require considerable modification before they can be made to do so. In many ways the present state of the Capitulations is a direct hindrance to commerce and to the natural development of Egypt; reform is therefore necessary, and it is earnestly hoped will shortly be accomplished. In leaving this subject we cannot too strongly insist on the commercial nature of the Capitulations. In their origin they were intended as a means of encouraging commerce, and that is still their sole *raison d'être*. Foreign commerce was necessary to the development of Egypt in the twelfth and thirteenth centuries; it is absolutely essential to the continued existence of Egypt as a prosperous State.

At the first it was the trade which passed through Egypt which attracted foreigners to the country—the trade which came from the Far East, and was landed at Suez, and re-shipped at Alexandria, as well as the trade which came down the Nile from Central Africa. The carrying trade from the Far East was at that

time shared by two other principal routes—that across Asia, through what is now Siberia, and that which followed the Euphrates route to the Levantine ports. But in regard to the Central African trade Egypt had no rival. To the loss of the Far Eastern trade Egypt may attribute the loss of her independence in 1517; and it was only with the reopening of the Suez route that Egypt's modern development became possible. Now that route is again threatened by its ancient rivals, disguised under their modern names—the Trans-Siberian Railway and the Bagdad Railway; the former of which has already given evidence of its importance. But modern Egypt has not merely to contend with her ancient rivals; the prospective canal through the Isthmus of Panama already threatens to upset the balance of the present commercial organisation of the world. The commerce of the Pacific may travel eastwards instead of westwards. Nor does Egypt now enjoy a monopoly of the commerce with Central Africa. Railways have already been made, or are in the course of construction, which will tend to divert this large source of wealth from the valley of the Nile before it reaches Egypt—the Uganda, Suakim and Congo Railways are all future rivals. This passage of the world's commerce through Egypt is, and has ever been, vital to her prosperity. It is all-important at the present time since, in addition to it, the country only possesses one other important source of income—her cotton crop, which depends precariously on the flood-water of the Nile, and which is only capable of being further developed at the cost of the construction of expensive irrigation works. The importance of the continuation and development of foreign commerce to the prosperity of Egypt is obvious. That commerce must therefore receive every possible encouragement; but it depends to-day, as it did in the past, upon the accordance of certain specific guarantees to foreigners: "The well-being and prosperity of the numerous Europeans who have made Egypt their place of residence is indissolubly bound up with the well-being and prosperity of the country."[1] But "we have to deal with the circumstances of the situation as they are. The present stage of Egyptian progress, and the facts connected with the police organisation and other cognate matters, have to be recognised. Those facts are of such a nature as to impose special treatment of Europeans for a long time to come."[2]

[1] Egypt, No. 1, 1905, p. 6.

[2] Egypt, No. 1, 1906, p. 2.

Lord Cromer's Report for 1906[1] in no way alters the suggested reforms outlined in his Report of 1905. He deals with the question, however, in much greater detail. The problem under discussion is: "How to preserve all that is worth preserving in the Capitulations, and at the same time to get rid of those portions which hamper the progress of the country and are detrimental to both Europeans and Egyptians." "What in my opinion is required is not a reform of the judicial but of the legislative system. Judicial reform in any important degree is only advocated in so far as it is a necessary complement to the adoption of an improved legislative system." Four things are involved in this necessary judicial reform: 1. The present system of the quinquennial renewal of the Mixed Courts should be abolished, and their institution in their present form should be definitely consented to until such time as shall be necessary for their modification by the new International Legislative Council, with the consent of both the Egyptian and British Governments. 2. This modification, when it is introduced, should consist of the permanent institution of courts composed in a manner precisely similar to the present Mixed Courts, with an essentially international character. 3. A body of laws based on the principles of the present codes should be perpetually maintained. 4. The present system of legislation for foreigners should be abolished, and the unanimous consent of the Powers should no longer be necessary before the Egyptian Law applicable to foreigners in Egypt can be modified. Instead, the principle should be substituted that the new International Courts should apply all laws passed by the majority of the new Legislative Council and approved by the Egyptian and British Governments. The jurisdiction of the Consuls in civil, commercial and penal cases would in consequence be transferred to the new International Courts, but the guarantees mentioned in the Report of 1905[2] are repeated. A foreigner accused of a penal offence shall not be sentenced to punishment unless by a court consisting of a single foreign Judge, or by a court of which three-fifths of the Bench are foreign Judges; the option of finding bail shall be allowed; warrants for the arrest of a foreigner shall only be issued by a foreign magistrate; sentences of death passed on a foreigner shall be notified to his Government to enable the Government to request that it be commuted to a sentence

[1] Egypt, No. 1, 1907, pp. 10-26. [2] Egypt, No. 1, 1906, p. 6.

of penal servitude, if it so desires; and the prisons in which foreign subjects are confined shall be open to the inspection of their Consuls.

No modification of the present system, in reference to the competence of the Consular Courts in cases of personal status, is suggested. "For the present my proposal is not only that the substantive law regulating matters of personal status should, on all essential points, remain as at present, national, but also that competence for deciding all such matters should continue to be vested in the Consular Tribunals. It is also to be borne in mind that so long as special Courts of Personal Statute exist for the different classes of local subjects, the foreigner resident in Egypt is fully entitled to retain his Consular Court as a Court of Personal Statute." The question may be considered under two heads: (1) The power of the International Legislative Council to legislate in matters of personal status; and (2) the competence of the Consular Courts to try cases of personal status arising between their nationals, or in which the defendant is their fellow-countryman. (1) In reference to the first of these questions the Council is not to have power to legislate, at least in regard to the more important matters, such as marriage, divorce, legitimacy, &c., which are to continue to be regulated by the national law of the parties; but, exceptionally, the Council may be granted power to deal with such questions as alimony where the parties are of different nationalities, or lunacy. (2) In regard to the second question, Lord Cromer points out that it is quite possible for a territorial court to administer the national law of status of a foreign litigant; and he admits that certain advantages might result if the International Courts were given competence in suits of personal status; but he personally deprecates any change.

The privilege of Domicile receives special attention. The question is summed up as follows:—"At present the Egyptian police cannot enter the house of any European without the consent of his Consul, and without the presence of a Consular Representative, who is almost invariably himself a native of the East. Under the new system, the consent of a European Magistrate will take the place of that of the Consul. No Consular Representative will be present when a search warrant or other similar process is executed. His place will be taken either by a European police officer or a European acting under the instruction of a European Law Court. In other

words, when a domiciliary visit is effected in the house of an Englishman, a Frenchman or a German resident in Cairo or Alexandria, the process will be similar to that which would have been adopted had the visit taken place in London, Paris, or Berlin, with the exception that the agents employed in carrying out the search, instead of being Englishmen, Frenchmen, or Germans, may be of some other European nationality. I cannot think that a change of this nature is one which the Europeans in Egypt need regard with any apprehension." The objection of foreigners to any lessening of the powers of their Consuls is in great part due to their want of confidence in the native police force. "It is a notorious fact, which is recognized by Europeans and Egyptians alike, that the abuse of power, which is by no means an uncommon feature in the police administration of other and more advanced countries, is specially likely to occur when the duty of carrying out the orders either of the executive or judicial authorities of the Government is exercised by the ordinary Egyptian policeman." Lord Cromer undertakes, in this regard, to have the number of European policemen in the large towns increased. At the same time powers of protection of their fellow-countrymen enjoyed by the Consuls will not in fact be lessened. "All that a Diplomatic or Consular Representative can now do, in the event of his considering that one of his countrymen or women has been improperly treated by the police, is to complain to the Egyptian executive authorities with a view to inquiry being made into the case, and redress being accorded in the event of the complaint being recognized as well founded. There is nothing whatever in any proposals which I have put forward to prevent a similar course being adopted in the future."

The powers of taxation to be exercised by the new Legislative Council in reference to foreigners is of the greatest importance. The question is dealt with shortly: "I propose that all rights now exercised by the Powers collectively as regards the taxation of Europeans in Egypt should be vested in the new Council, acting with the assent of the Egyptian and British Governments. So far as can be at present foreseen, it is highly improbable that any scheme of general taxation will be submitted to the consideration of the Council. The case is different as regards local taxation. I have on former occasions frequently stated, and I now repeat, that unless some plan to raise local taxes be devised and applied to Europeans and Egyptians alike,

it will be quite impossible to meet all the growing wants of the Egyptian towns."

The most important part of the Report of 1906 is undoubtedly the description of the composition of the suggested international Legislative Council. The Council, it is suggested, should be composed as follows:—

Egyptian Government officials . . .	4
European Judge of the Native Court of Appeal .	1
Judges of the Mixed Courts, either *ex officio* members or nominated by the whole body of Judges themselves	6
Elected members	20
Unofficial members nominated by the Egyptian Government	5
	36

There are three classes of members:—(1) *Ex officio;* (2) nominated; and (3) elected. "Manifestly any Legislative Council which can be constituted in Egypt must be composed partly of elected members and partly of members nominated by the Government." But "the application of the system of nomination should be restricted to what is generally recognized as necessary in the public interest." There are to be four *ex officio* members, namely, the Advisers to the Ministries of Finance, Justice, Interior and Public Works. "I indicate these officials because it is almost certain that all the questions which are discussed by the Council will concern one or other of these Departments." The Adviser to the Ministry of Education is not included, as it is not likely that questions concerning education will be considered by the Council. Any Government official, however, may be invited to attend in order to explain any scheme under consideration; but such official will not have any power to vote.

The nominated members are to be twelve in number. Of these seven are to be European Judges—one from the Native Courts, and the other six from the Mixed Courts. This suggestion is not in conformity with the theory of the separation of the Legislative and Judicial authorities, but it should be remembered that the Judges of the Mixed Courts, sitting in General Assembly, at present possess

important legislative powers. Further, the advisability of utilising the services of persons who are not only familiar with the present Egyptian Law, but are also conversant with the laws of European States is of sufficient importance to allow the theory of separation to be set aside in this particular case. In addition to this there will also be the difficulty of obtaining the services of the best class of foreign resident in Egypt, since the majority of these will not be in a position to spare the time from the management of their own private affairs. The provision that the Government may nominate other five members will be of great service in securing that the Council shall be representative of the different nationalities concerned, especially of those which have not so large a number of subjects resident in Egypt.

The number of elected members is to be twenty. The franchise is to be restricted. The electorate is to be formed by an amalgamated body of all nationalities, the representatives of the various Powers being instructed to prepare lists of Notables, or leading members of their respective communities, the number of these Notables representing each State being entirely dependent on the local Egyptian interest of the State in question, and not upon any political consideration. The six States with special interest in Egypt are Austria-Hungary, France, Germany, Greece, Great Britain and Italy. These are each to have not less than 25 nor more than 100 Notables to represent them. While in reference to the other States, which represent only 21 per cent. of the import and export trade, it is suggested that, "in the case of communities composed of more than 1000 individuals of both sexes, the list of Notables shall not be less than 5, and should not exceed 25; whilst in the case of those communities which number less than 1000, the number of Notables should, as before, be not less than 5, but should not exceed 10. If this plan were adopted, the electorate would consist in all of from 700 to 800 individuals, of whom 600 would be of Austrian, British, French, German, Greek, or Italian nationality." The qualifications for Notables should be: "(1) That they should be at least thirty years of age. (2) That they should be *bonâ fide* residents in Egypt, and have resided in the country for at least three years. (3) That they should pay land tax or house rent to a certain amount. (4) That they should never have been declared bankrupt, and have never, in Egypt, incurred a conviction for crime or serious mis-

demeanour." Each Notable is to be given 20 votes. But, as there is to be a provision that of the 32 members, that is excluding the 4 Advisers, only 4 may be of the same nationality, each individual voter "would probably cast his first four votes for the candidates who were his own countrymen. He would then dispose of sixteen more votes, which would have to be given to candidates of other nationalities."

The five non-official nominated members would be chosen from among the Notables. "They should be chosen from amongst those nationalities who, as a result of the nomination of the Judges by the Mixed Courts, and the election by the Notables, had not as yet attained the maximum number of four representatives. It appears to me that a power of this sort reserved to the Government may be of much use, whilst with the restrictions I have suggested, it is scarcely possible that it would be liable to much abuse. By means of the nominations left to the Government any defects or anomalies which might result from the elections might be rectified. A community of which no member had been elected might thus be accorded a representative. Further, the opportunity might be taken to add some men of professional or scientific attainments to the Council. Again, if some special interest—for instance, the chemists, or some other branch of the retail trade—were insufficiently represented, this defect might be remedied."

Lord Cromer repeats emphatically that the proposals which he makes "must be regarded merely as suggestions, which may form the basis for further discussion." The final decision lies with the Egyptian Government and the Governments of the different States which enjoy the privileges of the Capitulations. Much, however, will depend upon the views taken by the leaders of the different foreign communities in Egypt, as well as of the leaders of native public opinion. "To the Egyptians I would say that some plan based on the broad features of that which I have sketched out is, I am convinced, the only method by which they can, within any period which it is now possible to foresee, be relieved of those portions of the Capitulations which retard the progress of their country, and of which they so frequently, and, I should add, so legitimately, complain. To the Europeans who have made Egypt their home I would say that, in my desire to guard against any reappearance of the arbitrary methods of government against which the Capitulations were intended to protect them,

I am no less European than they; that though the rights and privileges which they may very naturally prize are taken away in one form, they are simultaneously granted in another form of equal and far less objectionable efficacy; and that, in addition, the inestimable privilege will be granted to them of making their own laws, instead of being dependent on the vicissitudes of European politics and on the views taken in fifteen different capitals of the world by others, who, however much they may be animated by good intentions, must necessarily be ignorant of local requirements."

Lord Cromer also refers to the Egyptian Legislative Assemblies, and does not consider that the country is prepared for any large reform in their constitution. "Whatever defects at present exist are due, not to the machinery of the electoral system, but to the fact that the idea of popular representation, in the European sense of the term, has not yet taken root in Egypt." If the Assemblies are not representative of the people that is greatly the fault of the people themselves. "As regard the elected members both of the Council and of the Assembly, it is obvious that, under the existing system, the question of how far they are really representative of Egyptian public opinion depends in a great degree on the interest taken in the election of the delegates." The Egyptian people *as a whole* do not interest themselves in the work of government, and are not yet prepared for any more extended system of representation; the people must be educated. Lord Dufferin wrote in 1883: "It is certain that local self-government is the fittest preparation and most convenient stepping stone for anything approaching to a constitutional régime." Lord Cromer fully endorses this principle. Much has already been done by the Egyptian Government in granting the Egyptian people the opportunity of educating themselves in the work of representative institutions; not only are there Provincial Councils in each Moudiriah, but a system of Municipalities is being rapidly extended to all the more important towns; but the principal obstacle to any complete extension of the municipal system is the present provisions of the Capitulations. Municipal authorities must have certain powers to impose taxes for local purposes. These powers cannot be acquired without the consent of all the European Governments, since the Capitulations exempt foreigners from the payment of taxes. If the Capitulations were modified, as is now suggested, this difficulty would disappear, and the adoption of a wider system

of Municipalities would become general. The law will be modified as far as it is possible for the Egyptian Government to modify it, and the system of Local Government will be extended as far as circumstances will permit, and to that extent will the Egyptian people be able to prepare themselves for the exercise of fuller constitutional powers; but a complete extension of Local Government depends upon the modification of the Capitulations. The interest of the Egyptian native in the reform of the Capitulations is thus vitally personal; the interests of the native and foreign residents in Egypt are not distinct in this matter. The prosperity of Egypt as a whole depends upon the modification of the Capitulations. It is not a race question but an Egyptian question—a question vital to the interests of *all* residents in Egypt.

APPENDIX.

APPENDIX

STATUTORY RULES AND ORDERS, 1899
No. 595

FOREIGN JURISDICTION
Ottoman Dominions

The Ottoman Order in Council, 1899

At the Court at Osborne House, Isle of Wight, the 8th day of August, 1899.

Present:

The Queen's Most Excellent Majesty.

Lord Chancellor
Lord President
Lord James of Hereford
Sir Fleetwood Edwards.

Whereas by Treaty, Capitulation, Grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within the dominions of the Ottoman Porte:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:—

Part I.—Preliminary and General.

1. This Order is divided into parts, as follows:—

Parts.	Subject.	Articles.
I.	Preliminary and General	1-6
II.	Constitution and Powers of Courts	7-24
III.	Criminal Matters	25-62
IV.	Civil Matters	63-135
V.	Procedure, Criminal and Civil	136-149
VI.	Ottoman and Foreign Subjects and Tribunals	150-157
VII.	Miscellaneous	158-172
	Schedule of Repealed Orders.	

2. The limits of this Order are the dominions of the Sublime Ottoman Porte, but, as respects Egypt, do not extend to any place south of the 22nd parallel of north latitude; and the expressions "Ottoman Dominions" and "Egypt" shall, for the purposes of this Order, be construed accordingly.

3. In the construction of this Order the following words and expressions have the meanings hereby assigned to them, unless there be something in the subject or context repugnant thereto, that is to say:—

"Administration" means letters of administration, including the same with will annexed or granted for special or limited purposes, or limited in duration.

"The Ambassador" means Her Majesty's Ambassador, and includes Chargé d'Affaires or other Chief Diplomatic Representative of Her Majesty in the Ottoman dominions for the time being.

"Agent for Egypt" means Her Majesty's Agent and Consul-General for Egypt, and includes any person temporarily appointed to act for that officer.

"British merchant-ship" means a merchant ship being a British ship within the meaning of "The Merchant Shipping Act, 1894."

"British subject" includes a British protected person, that is to say, a person who either (*a*) is a native of any Protectorate of Her Majesty, and is for the time being in the Ottoman dominions; or (*b*) by virtue of Section 15 of "The Foreign Jurisdiction Act, 1890," or otherwise, enjoys Her Majesty's protection in the Ottoman dominions.

"Consular district" means the district in and for which a Consular officer usually acts, or for which he may be authorised to act, for all or any of the purposes of this Order by authority of the Secretary of State.

"Consular officer" means a Consul-General, Consul, Vice-Consul, Consular Agent, or pro-Consul of Her Majesty, resident in the Ottoman dominions, including a person acting temporarily, with the approval of the Secretary of State, as or for a Consul-General, Consul, Vice-Consul or Consular Agent of Her Majesty so resident; and—

(*a*) "Commissioned Consular officer" means a Consular officer holding a commission of Consul-General, Consul, or Vice-Consul from Her Majesty, including a person acting temporarily, with the approval of the Secretary of State, as or for such a commissioned Consular officer;

(*b*) "Uncommissioned Consular officer" means a Consular officer not holding such a commission, including a person acting temporarily, with the approval of the Secretary of State, as or for such an uncommissioned Consular officer.

"Consulate" and "Consular office" refer to the Consulate and office of a Consular officer.

"The Court," except when the reference is to a particular Court, means any Court established under this Order, subject, however, to the provisions of this Order with respect to powers and local jurisdictions.

"Foreigner" means a subject or citizen of a State in amity with Her Majesty, other than the Sublime Ottoman Porte.

"Judge," in relation to any Court, includes any person temporarily appointed to act as Judge of that Court.

"Legal practitioner" includes barrister-at-law, advocate, solicitor, writer to the Signet, and any person possessing similar qualifications.

"Lunatic" means idiot or person of unsound mind.

"Master," with respect to any ship, includes every person (except a pilot) having command or charge of that ship.

"Month" means calendar month.

"Oath" and "affidavit," in the case of persons for the time being allowed by law to affirm or declare, instead of swearing, include affirmation and declaration, and the expression "swear," in the like case, includes affirm and declare.

"Offence" includes crime, and any act or omission punishable criminally in a summary way or otherwise.

"Office copy" means a copy made under the direction of the Court, or produced to the proper officer of the Court for examination with the original, and examined by him and sealed with the seal of the Court.

"Ottoman subject" means a subject of the Sublime Ottoman Porte.

"Ottoman Tribunal" means any Ottoman Tribunal of Commerce, Ottoman Civil Tribunal, or Ottoman Maritime Court, or other Ottoman Tribunal.

"Ottoman waters" means the territorial waters of the Ottoman dominions.

"Person" includes Corporation.

"Pounds" means pounds sterling.

"Prescribed" means prescribed by Rules of Court.

"Prosecutor" means complainant or any person appointed or allowed by the Court to prosecute.

"Proved" means shown by evidence on oath, in the form of affidavit, or other form, to the satisfaction of the Court or Consular officer acting or having jurisdiction in the matter, and "proof" means the evidence adduced in that behalf.

"Resident" means having a fixed place of abode in the Ottoman dominions.

"Rules of Court" means rules of Court made under the provisions of this Order.

"Secretary of State" means one of Her Majesty's Principal Secretaries of State.

"Ship" includes any vessel used in navigation, however propelled, with her tackle, furniture, and apparel, and any boat or other craft.

"The Treasury" means the Commissioners of Her Majesty's Treasury.

"Treaty" includes any Convention, Agreement, or Arrangement, made by or on behalf of Her Majesty with any State or Government, King, Chief, people, or tribe, whether His Majesty the Sultan is or is not a party thereto.

"Will" means will, codicil, or other testamentary instrument.

Expressions used in any rules, regulations, or orders made under this Order shall, unless a contrary intention appears, have the same respective meanings as in this Order.

4.—(1.) Words importing the plural or the singular may be construed as referring to one person or thing, or to more than one person or thing, and words importing the masculine as referring to the femine (as the case may require).

(2.) Where this Order confers any power or imposes any duty, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(3.) Where this Order confers a power, or imposes a duty on, or with respect to, a holder of an office, as such, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by, or with respect to, the holder for the time being of the office or the person temporarily acting for the holder.

(4.) Where this Order confers a power to make any rules, regulations, or orders, the power shall, unless a contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, vary, or amend the rules, regulations or orders.

(5.) This Article shall apply to the construction of any rules, regulalations, or orders made under this Order, unless a contrary intention appears.

5. The jurisdiction conferred by this Order extends to the persons and matters following, in so far as by Treaty, grant, usage, sufferance, or other lawful means, Her Majesty has jurisdiction in relation to such matters and things, that is to say:—

(i.) British subjects, as herein defined, within the limits of this Order.

(ii.) The property and all personal or proprietary rights and liabilities within the said limits of British subjects, whether such subjects are within the said limits or not.

(iii.) Ottoman subjects and foreigners in the cases and according to the conditions specified in this Order and not otherwise.

(iv.) Foreigners with respect to whom any State, King, Chief, or Government, whose subjects, or under whose protection they are, has by any Treaty as herein defined or otherwise agreed with Her Majesty for, or consents to, the exercise of power or authority by Her Majesty.

(v.) British ships with their boats, and the persons and property on board thereof, or belonging thereto, being within the Ottoman dominions.

6. All Her Majesty's jurisdiction exercisable in the Ottoman dominions for the hearing and determination of criminal or civil matters, or for the maintenance of order, or for the control or administration of persons or property, or in relation thereto, shall be exercised under and according to the provisions of this Order, and not otherwise.

Part II.—Constitution and Powers of Courts.

7.—(1.) There shall be a Court styled "Her Britannic Majesty's Supreme Consular Court for the Dominions of the Sublime Ottoman Porte" (in this Order referred to as the Supreme Court, and comprised in the term "the Court").

(2.) Subject to the provisions of this Order there shall be two Judges of the Supreme Court, that is say, a Judge, and an Assistant Judge, who shall respectively be appointed by Her Majesty by warrant under Her Royal Sign Manual.

Each shall be at the time of his appointment a member of the Bar of England, Scotland, or Ireland, of not less than seven years' standing.

(3.) Each of the Judges may hold a Commission from Her Majesty as Consul-General or Consul.

(4.) The Judges shall sit together for the purposes described in this Order, and the Supreme Court so constituted is hereinafter in this Order referred to as "the Full Court."

(5.) There shall be attached to the Supreme Court a Registrar, a Marshal, and so many officers and clerks under such designations as the Secretary of State thinks fit; but unless and until the Secretary of State otherwise appoints, the Assistant Judge shall act as Registrar of the Supreme Court.

(6.) In case of the death, illness, or other incapacity, or of the absence or intended absence from the Consular district of Constantinople of either of the Judges, the Ambassador may, if he thinks fit, appoint a fit person to be Acting Judge, or Acting Assistant Judge, as the case may be. If the appointment has to be made to the office of Acting Judge, the Assistant Judge, if present and not incapacitated, shall, unless the Secretary of State otherwise directs, be appointed, and if he is so appointed, the Ambassador may, if he thinks fit, appoint a fit person to act as Assistant Judge.

(7.) The Secretary of State may temporarily attach to the Supreme Court such persons, being Consular officers, as he thinks fit.

A person thus attached shall discharge such duties in connection with the Court as the Judge, with the approval of the Secretary of State, may direct.

8.—(1.) Every commissioned Consular officer, with such exceptions (if any) as the Secretary of State thinks fit to make, shall for and in his own Consular district hold and form a Court, in this Order referred to as a Provincial Court.

(2.) Every uncommissioned Consular officer, with such exceptions (if any) as the Supreme Court, by writing under the hand of the Judge and the seal of that Court, thinks fit to make, shall for and in his own Consular district, subject to the provisions of this Order, hold and form a Court, in this Order referred to as a Local Court.

(3.) Every Provincial and Local Court shall be styled "Her Britannic Majesty's Consular Court of Smyrna" (or as the case may be).

(4.) Every reference in this Order to a Provincial Court in relation to a Local Court shall be deemed to be a reference to a Provincial Court held by the commissioned Consular officer, under whose superintendence the uncommissioned Consular officer holding the Local Court acts.

(5.) Every Provincial Court shall, with the approval of the Supreme Court, and every Local Court may, with the approval of the Provincial Court, appoint a competent person, or persons, to perform such duties and to exercise such powers as are by this Order and any Rules of Court imposed or conferred upon the Registrar and Marshal, and any person so appointed shall perform such duties and exercise such powers accordingly.

9.—(1.) The Secretary of State may, when he thinks fit, under his hand, appoint a competent person to act temporarily as Special Judge of the Supreme Court. He shall be a person qualified to be appointed a Judge of the Supreme Court under this Order.

(2.) The Secretary of State may by order assign any case, civil or criminal, and whether pending at or commenced after the commencement of this Order, to be tried by or before the Special Judge, and in relation to any case so assigned, all the powers, authority, and jurisdiction of the Supreme Court shall be vested in and exercised by the Special Judge, and if the order so provides the Judges shall not exercise any jurisdiction therein.

(3.) The Special Judge may, subject to any directions of the Secretary of State, sit in any part of the Ottoman dominions.

(4.) If in any criminal case so assigned the Special Judge is of opinion that a jury or assessors cannot conveniently be obtained, he may act without a jury or assessors.

(5.) If any civil case so assigned, whether before or after the commencement of this Order, is set down for rehearing, the same shall be reheard before the Special Judge, with or without either of the Judges of the Supreme Court, or, when the attendance of the Special Judge seems no longer necessary, before the full Court, as the Secretary of State may by the order or any subsequent order direct.

(6.) The remuneration and expenses of any Special Judge shall be paid as the Secretary of State, with the consent of the Treasury, directs.

10. The Supreme Court shall have a seal, bearing the style of the Court and such device as the Secretary of State approves, but the seal in use at the commencement of this Order shall continue to be used until a new seal is provided.

In each of the Provincial and Local Courts the official seal of the Consular officer shall be used.

11. All Her Majesty's jurisdiction, civil and criminal, including any jurisdiction by this Order conferred expressly on a Provincial Court, shall for and within the district of the Consulate of Constantinople be vested exclusively in the Supreme Court as its ordinary original jurisdiction.

12. All Her Majesty's jurisdiction, civil and criminal, not under this Order vested exclusively in the Supreme Court, shall to the extent and in the manner provided by this Order be vested in the Provincial and Local Courts.

Provided that as regards all such matters and cases as come within the jurisdiction of any Egyptian Courts established with the concurrence of Her Majesty, the operation of this Order is hereby suspended until Her Majesty by and with the advice of Her Privy Council shall otherwise order.

13. The Supreme Court shall have in all matters, civil and criminal, an original jurisdiction, concurrent with the jurisdiction of the several Provincial and Local Courts to be exercised subject and according to the provisions of this Order.

14. The Supreme Court shall ordinarily sit at Constantinople and as occasion requires at Alexandria or Cairo; but may, on emergency, sit at any other place within the Ottoman dominions, and may at any time transfer its ordinary sittings to any such place as the Secretary of State approves. Under this Article the Judges may sit at the same time at different places, and each sitting shall be deemed to be a sitting of the Supreme Court.

15.—(1.) The Registrars of the Provincial Courts at Alexandria and Cairo respectively shall be also District Registrars of the Supreme Court.

(2.) They shall, subject to Rules of Court, perform the like duties in respect of proceedings of the Supreme Court pending in their respective District Registries, as are performed by the Registrar of the Supreme Court in respect of proceedings pending in the Registry of the Court at Constantinople.

(3.) Summonses for the commencement of actions in the Supreme Court shall be issued by the District Registrars when thereunto required, and all such further proceedings as might be taken and recorded in the Registry of the Supreme Court at Constantinople may be taken and recorded in the District Registry in any actions pending in such District Registries respectively.

(4.) The exercise of powers and performance of duties by District Registries at Alexandria and Cairo shall be subject to the control and direction of the Provincial Courts of Alexandria and Cairo respectively in the same manner and to the same extent, subject to Rules of Court, as the exercise of powers and performance of duties by the Registrar of the Supreme Court at Constantinople are subject to the control and direction of a Judge of the Supreme Court.

Provided that where a Judge of the Supreme Court is present in Alexandria or Cairo the said control and direction shall be exercised exclusively by such Judge.

16. The Judge or under his directions the Assistant Judge of the

Supreme Court may visit, in a magisterial or judicial capacity, any place in the Ottoman dominions, and there inquire of, or hear and determine, any case, civil or criminal, and may examine any records or other documents in any Provincial or Local Court, and give directions as to the keeping thereof.

17. A Provincial Court shall have in all matters, civil and criminal, an original jurisdiction, concurrent with the jurisdiction of the several Local Courts (if any) held within its district to be exercised subject and according to the provisions of this Order.

18.—(1.) Where any case, civil or criminal, commenced in a Local Court, appears to that Court to be beyond its jurisdiction, or to be one which for any other reason ought to be tried in the Provincial Court or the Supreme Court, the Local Court shall report the case to the Provincial Court for directions.

(2.) Subject to any directions of the Supreme Court under this Article, a Provincial Court may of its own motion, or on the report of a Local Court, or on the application of any party concerned, require any case, civil or criminal, pending in a Local Court to be transferred to the Provincial Court, or in the case of any such report or application, may direct that the case shall proceed in the Local Court.

(3.) Where any case, civil or criminal, commenced in a Provincial Court, or reported or transferred to that Court under this Article, appears to the Provincial Court to be beyond its jurisdiction, or to be one which for any other reason ought to be tried in the Supreme Court, the Provincial Court shall report the case to the Supreme Court for directions.

(4.) The Supreme Court may of its own motion, or upon the report of a Provincial Court, or on the application of any party concerned, require any case, civil or criminal, pending in any Provincial or Local Court to be transferred to, or tried in, the Supreme Court, or may direct in what Court and in what mode, subject to the provisions of this Order, any such case shall be tried.

19. The Supreme Court, and each Provincial Court shall, in the exercise of every part of its jurisdiction, be a Court of Record.

20.—(1.) Every Provincial and Local Court shall execute any writ or order issuing from the Supreme Court, and shall take security from any person named in a writ or order for his appearance personally or by attorney, and shall, in default of security being given, or when the Supreme Court so orders, send the person on board one of Her Majesty's vessels of war to Constantinople, or such other port as may be named in the order, or, if no vessel of war is available, then on board some British or other fit vessel.

(2.) The order of the Court shall be sufficient authority to the commander or master of the vessel to receive and detain the person, and deliver him up at the port named according to the order.

21. The Supreme Court, and each Provincial and Local Court, shall be auxiliary to one another in all particulars relative to the administration of justice, civil or criminal.

22. Each Provincial and Local Court shall at such time as may be fixed by rules of Court furnish to the Supreme Court an annual report of every case, civil and criminal, brought before it, in such form as the Supreme Court directs.

The report of a Local Court shall be sent through the Provincial Court.

23. Subject to the provisions of this Order, criminal and civil cases may be tried as follows :—

(*a*) In the case of the Supreme Court, by the Court itself, or by the Court with a jury, or with assessors.

(*b*) In the case of a Provincial Court, by the Court itself, or by the Court with assessors.

(*c*) In the case of a Local Court, by the Court itself, without assessors or jury.

24.—(1.) Notwithstanding anything in this Order, the Court shall not exercise any jurisdiction in any proceeding whatsoever over the Ambassador, or over his official or other residences, or his official or other property.

(2.) Notwithstanding anything in this Order, the Court shall not exercise, except with the consent of the Ambassador signified in writing to the Court, any jurisdiction in any proceeding over any person attached to or being a member of, or in the service of, the Embassy.

(3.) If in any case under this Order it appears to the Court that the attendance of the Ambassador, or of any person attached to or being a member of the Embassy, or being in the service of the Embassy, to give evidence before the Court is requisite in the interest of justice, the Court may address to the Ambassador a request in writing for such attendance.

(4.) A person attending to give evidence before the Court shall not be compelled or allowed to give any evidence or produce any document, if, in the opinion of the Ambassador, signified by him personally or in writing to the Court, the giving or production thereof would be injurious to Her Majesty's service.

(5.) This Article shall apply to Her Majesty's Agency in Egypt, and the foregoing provisions shall for the purpose of this application be read as if "Her Majesty's Agent and Consul-General" were substituted for "the Ambassador," and "Agency" for "Embassy," wherever those words respectively occur.

Part III.—Criminal Matters.

25.—(1.) Except as regards offences against the Capitulations, Articles of Peace, and Treaties between Her Majesty and the Sublime Ottoman Porte, or against any rules and regulations for the observance thereof, or for the maintenance of order among British subjects in the Ottoman dominions, made by or under the authority of Her Majesty, or against any of the provisions of this Order :—

Any act that would not by a Court of Justice having criminal jurisdiction in England be deemed an offence in England, shall not, in

the exercise of criminal jurisdiction under this Order, be deemed an offence, or be the subject of any criminal proceeding under this Order.

(2.) Subject to the provisions of this Order, criminal jurisdiction under this Order shall, as far as circumstances admit, be exercised on the principles of, and in conformity with, the statute and other law for the time being in force in and for England, and with the powers vested in the Courts of Justice and Justices of the Peace, in England, according to their respective jurisdiction and authority.

26.—(1.) If any person is guilty of an offence against this Order not distinguished as a grave offence against this Order, he is liable, on summary conviction—

(i.) To a fine not exceeding £5, without any imprisonment; or

(ii.) To imprisonment not exceeding one month, without fine; or

(iii.) To imprisonment not exceeding fourteen days, with a fine not exceeding 50s.

(2.) Imprisonment under this Article is without hard labour.

27.—(1.) If any person is guilty of an offence against this Order, distinguished as a grave offence against this Order, he is liable, on summary conviction before the Supreme Court or a Provincial Court—

(i.) To a fine not exceeding £10, without imprisonment; or

(ii.) To imprisonment not exceeding two months, without fine; or

(iii.) To imprisonment not exceeding one month, with a fine not exceeding £5.

(2.) Imprisonment under this Article is, in the discretion of the Court, with or without hard labour.

28. Every Court may cause to be summoned or arrested, and brought before it, any person subject to, and being within the limits of, its jurisdiction, and charged with having committed an offence cognizable under this Order, and may deal with the accused according to the jurisdiction of the Court and in conformity with the provisions of this Order; or when the offence is liable and is to be tried in England, to take the preliminary examination, and to commit the accused for trial, and cause or allow him to be taken to England.

29. For the purposes of criminal jurisdiction every offence and cause of complaint committed or arising in the Ottoman dominions shall be deemed to have been committed or to have arisen, either in the place where the same actually was committed or arose, or in any place in the Ottoman dominions where the person charged or complained of happens to be at the time of the institution or commencement of the charge or complaint.

30. Where a British subject is charged with the commission of an offence the cognizance whereof appertains to the Court, and it is expedient that the crime or offence be inquired of, tried, determined, and punished within Her Majesty's dominions elsewhere than in England, the accused may (under "The Foreign Jurisdiction Act, 1890," section 6) be sent for trial to Bombay or Malta.

The Supreme Court may, where it appears so expedient, by warrant under the hand of the Judge and the seal of the Court, cause the accused to be sent for trial to Bombay or Malta accordingly.

The warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named, and to carry him to and deliver him up to Bombay or to Malta (as the case may be), according to the warrant.

Where any person is to be so sent to Bombay or to Malta, the Court before which he is charged shall take the preliminary examination, and shall bind over such of the proper witnesses as are British subjects in their own recognisances to appear and give evidence on the trial.

31.—(1.) The Supreme Court may adjudge punishment as follows:—

(*a*) Imprisonment, not exceeding twenty years, with or without hard labour, and with or without a fine not exceeding £500; or,

(*b*) A fine not exceeding £500, without imprisonment; and

(*c*) In case of a continuing offence, in addition to imprisonment or fine, or both, a fine not exceeding £1 for each day during which the offence continues after the day of the commission of the original offence.

(2.) A Provincial Court may adjudge punishment as follows:—

Imprisonment, not exceeding twelve months, with or without hard labour, and with or without a fine not exceeding £50; or,

A fine not exceeding £50, without imprisonment.

(3.) A Local Court may adjudge punishment as follows:—

A fine not exceeding £5, without imprisonment; provided that a Local Court shall not hear and determine any charge unless the offence is punishable on summary conviction.

32.—(1.) Every accused person shall be tried upon a charge, which shall state the offence charged, with such particulars as to the time and place of the alleged offence, and the person (if any) against whom or the thing (if any) in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2.) The fact that a charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(3.) Where the nature of the case is such that the particulars above mentioned do not give such sufficient notice as aforesaid, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will give such sufficient notice.

33. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases following, that is to say—

(*a*) Where a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences he may be charged with, and tried at one trial for, any number of them not exceeding three.

(*b*) If in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(*c*) If the acts alleged constitute an offence falling within two or more definitions or descriptions of offences in any law or laws, the accused may be charged with, and tried at one trial for, each of such offences.

(*d*) If several acts constitute several offences, and also, when combined, a different offence, the accused may be charged with, and tried at one trial for, the offence constituted by such acts when combined, or one or more of the several offences, but in the latter case shall not be punished with more severe punishment than the Court which tries him could award for any one of those offences.

(*e*) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the offences; and if it appears in evidence that he has committed a different offence for which he might have been charged, he may be convicted of that offence, although not charged with it.

34. When more persons than one are accused of the same offence or of different offences committed in the same transaction, or when one is accused of committing an offence and another of abetting or attempting to commit that offence, they may be charged and tried together or separately, as the Court thinks fit.

35.—(1.) Any Court, if sitting with a jury or assessors, may alter any charge at any time before the verdict of the jury is returned or the opinions of the assessors are expressed; if sitting without jury or assessors, at any time before judgment is pronounced.

(2.) Every such alteration shall be read and explained to the accused.

(3.) If the altered charge is such that proceeding with the trial immediately is likely, in the opinion of the Court, to prejudice the accused or the prosecutor, the Court may adjourn the trial for such period as may be necessary.

36.—(1.) No error or omission in stating either the offence or the particulars shall be regarded at any state of the case as material unless the accused was misled by such error or omission.

(2.) When the facts alleged in certain particulars are proved and constitute an offence, and the remaining particulars are not proved, the accused may be convicted of the offence constituted by the facts proved, although not charged with it.

(3.) When a person is charged with an offence and the evidence proves either the commission of a minor offence, or an attempt to commit the offence charged, he may be convicted of the minor offence or of the attempt.

37.—(1.) If the accused has been previously convicted of any offence, and it is intended to prove such conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction shall be stated in the charge.

(2.) If such statement is omitted, the Court may add it at any time before sentence is passed.

(3.) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted, as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(4.) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted, as alleged in the charge.

(5.) If he answers that he has been so previously convicted, the Court may proceed to pass sentence on him accordingly, but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the Court shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

38.—(1.) In each of the two following cases, namely:—

(i.) Where the offence charged is felony; or,

(ii.) When it appears to the Court at any time before the trial, the opinion of the Court being recorded in the Minutes, that the offence charged, if proved, would not be adequately punished by imprisonment for three months with hard labour, or by a fine of £20, or both such imprisonment and fine,—

The charge shall be triable with a jury or assessors (according to the provisions of this Order applicable to the Court); but may, with the consent of the accused, be tried without assessors or jury. In the Supreme Court, when the accused does not so consent, the charge shall be tried with a jury, unless the Court is of opinion that a jury cannot be obtained.

(2.) The Supreme Court may, for any special reason, direct that any case shall be tried with assessors or a jury, and a Provincial Court may, for any special reason, direct that any case shall be tried with assessors. In each such case the special reason shall be recorded in the Minutes.

39.—(1.) The Registrar of the Supreme Court when the duties of that officer are not performed by the Assistant Judge shall, subject to any directions of the Supreme Court, hear and determine such criminal cases in that Court as may, under this Order, be heard and determined without assessors or jury, and for this purpose shall exercise all the powers and jurisdiction of a Provincial Court.

(2.) The officer performing the duties of Registrar, in a Provincial or Local Court shall, when required by the Court, act as public prosecutor, and conduct the prosecution in any criminal case.

40.—(1.) Where a charge made in a Provincial or Local Court appears to that Court to be one which ought under the provisions of this Order to be reported, the Provincial or Local Court shall proceed to make a preliminary examination of the charge in the prescribed manner, and

shall send the depositions and a Minute of other evidence (if any) together with its Report, in the case of a Provincial Court, to the Supreme Court, or in the case of a Local Court, to the Provincial Court.

(2.) Where a charge, reported to a Provincial Court under this Article appears to that Court to be one which ought to be reported to the Supreme Court, the Provincial Court shall send the depositions, Minutes, and Report of the Local Court, with a covering Report, to the Supreme Court.

41.—(1.) Where a person charged with an offence is arrested on warrant issuing out of any Court, he shall be brought before the Court within 48 hours after the execution of the warrant, unless in any case circumstances unavoidably prevent his being brought before the Court within that time, which circumstances shall be recorded in the Minutes.

(2.) In every case, he shall be brought before the Court as soon as circumstances reasonably admit, and the time and circumstances shall be recorded in the Minutes.

42.—(1.) Where the accused is ordered to be tried before a Court with a jury or with assessors, he shall be tried as soon after the making of the order as circumstances reasonably admit.

(2.) As long notice of the time of trial as circumstances reasonably admit shall be given to him in writing, under the seal of the Court, which notice, and the time thereof, shall be recorded in the Minutes.

43.—(1.) Where an accused person is in custody, he shall not be remanded at any time for more than seven days, unless circumstances appear to the Court to make it necessary or proper that he should be remanded for a longer time, which circumstances, and the time of remand, shall be recorded in the Minutes.

(2.) In no case shall a remand be for more than fourteen days at one time, unless in case of illness of the accused or other case of necessity.

44.—(1.) The Court may, in its discretion, admit to bail a person charged with any of the following offences, namely:—

Any felony.

Riot.

Assault on any officer in the execution of his duty, or on any person acting in his aid.

Neglect or breach of duty by an officer.

But a person charged with treason or murder shall not be admitted to bail except by the Supreme Court.

(2.) In all other cases the Court shall admit the accused to bail unless the Court, having regard to the circumstances, sees good reason to the contrary, which reason shall be recorded in the Minutes.

(3.) The Supreme Court may admit a person to bail, although a Provincial or Local Court has not thought fit to do so.

(4.) The accused who is to be admitted to bail, either on remand or on or after trial ordered, shall produce such surety or sureties as, in the opinion of the Court, will be sufficient to insure his appearance as and when required, and shall with him or them enter into a recognisance accordingly.

45.—(1.) Where after a preliminary examination the accused is ordered to be tried, the Court shall bind by recognisance the prosecutor, and every witness to appear at the trial to prosecute, or to prosecute and give evidence, or to give evidence (as the case may be).

(2.) If a British subject refuses to enter into such recognisance the Court may send him to prison, there to remain until after the trial, unless in the meantime he enters into a recognisance.

(3.) But if afterwards, from want of sufficient evidence or other cause, the accused is discharged, the Court shall order that the person imprisoned for so refusing be also discharged.

(4.) Where the prosecutor or witness is not a British subject, the Court may require him either to enter into a recognisance or to give other security for his attendance at the trial, and if he fails to do so may in its discretion dismiss the charge.

46.—(1.) Where an accused person is convicted of murder, the proper officer of the Supreme Court, under the direction of the presiding Judge, shall, in open Court, require the offender to state if he has anything to say why judgment of death should not be recorded against him.

(2.) If the offender does not allege anything that would be sufficient in law to prevent judgment of death if the offence and trial had been committed and had in England, the Judge may order that judgment of death be entered on record.

(3.) Thereupon the proper officer shall enter judgment of death on record against the offender, as if judgment of death had been actually pronounced on him in open Court by the Judge.

(4.) The presiding Judge shall forthwith send a Report of the Judgment, together with a copy of the Minutes and of the notes of evidence and any observations which he thinks fit to make, to the Secretary of State for his direction respecting the punishment to be actually imposed.

(5.) The punishment actually imposed shall not in any case exceed the measure of imprisonment and fine which the Supreme Court is empowered by this Order to impose.

47.—(1.) The Court may, if it thinks fit, order a person convicted of an assault to pay to the person assaulted by way of damages any sum not exceeding £10.

(2.) Damages so ordered to be paid may be either in addition to or in lieu of a fine, and shall be recoverable in like manner as a fine.

(3.) Payment of such damages shall be a defence to an action for the assault.

48.—(1.) The Court may, if it thinks fit, order a person convicted before it to pay all or part of the expenses of his prosecution, or of his imprisonment or other punishment, or of both the amount being specified in the order.

(2.) Where it appears to the Court that the charge is malicious, or frivolous and vexatious, the Court may, if it thinks fit, order the complainant to pay all or part of the expenses of the prosecution, the amount being specified in the order.

(3.) In these respective cases the Court may, if it thinks fit, order that the whole or such portion as the Court thinks fit of the expenses so paid be paid over to the complainant or to the accused (as the case may be).

(4.) In all cases the reasons of the Court for making any such order, or for refusing it if applied for, shall be recorded in the Minutes.

49. Subject to Rules of Court made under this Order, the Court may order payment of the reasonable expenses of any complainant or witness attending before the Court on the trial of any criminal case by a jury or with assessors, and also of the reasonable expenses of the jury or assessors.

50.—(1.) The Supreme Court may by general order approved by the Secretary of State prescribe the manner in which and the prisons in the Ottoman dominions at which punishments passed by any Court or otherwise awarded under this Order are to be carried into execution.

(2.) The warrant of any Court shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named in any prison so prescribed.

51.—(1.) Where an offender is sentenced to imprisonment, and the Supreme Court thinks it expedient that the sentence be carried into effect within Her Majesty's dominions, and the offender is accordingly under section 7 of "The Foreign Jurisdiction Act, 1890," sent for imprisonment to a place in Her Majesty's dominions, the place shall be either Malta or Gibraltar, or a place in some other part of Her Majesty's dominions out of the United Kingdom, the Government whereof consents that offenders may be sent thither under this Article.

(2.) The Supreme Court may, by warrant under the hand of a Judge and the seal of the Court, cause the offender to be sent to Malta or Gibraltar, or other such place as aforesaid, in order that the sentence may be there carried into effect accordingly.

(3.) The warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named and to carry him to and deliver him up at the place named, according to the warrant.

52. "The Fugitive Offenders Act, 1881," and "The Colonial Prisoners Removal Act, 1884," shall apply to Egypt and to the Ottoman dominions other than Egypt as if those places were respectively British possessions and parts of Her Majesty's dominions.

Subject as follows:—

(*a*) As respects Egypt, Her Majesty's Agent and Consul-General, and as respects the Ottoman dominions (other than Egypt), the Ambassador at Constantinople is hereby substituted for the Governor or Government of a British possession.

(*b*) The Supreme Court, or in Egypt, during the absence of a Judge of the Supreme Court, the Provincial Court at Alexandria is hereby substituted for a Superior Court of a British possession.

(*c*) The Supreme Court and each Provincial Court is substituted for a Magistrate of any part of Her Majesty's dominions.

(*d*) For the purposes of Part II. of the said Act of 1881, and of this Article in relation thereto, the Ottoman dominions and Malta and Gibraltar shall be deemed to be one group of British possessions.

53.—(1.) The Supreme Court may, if it thinks fit, report to the Secretary of State recommending a mitigation or remission of any punishment awarded by the Court; and thereupon the punishment may be mitigated or remitted by the Secretary of State.

(2.) Nothing in this Order shall affect Her Majesty's prerogative of pardon.

54. Where a person charged with an offence escapes or removes from the Consular district within which the offence was committed and is found within another Consular district, the Court within whose district he is found may proceed in the case to trial and punishment, or to preliminary examination (as the case may require), in like manner as if the offence had been committed in its own district; or may, on the requisition or with the consent of the Court within whose district the offence was committed, send him in custody to that Court, or require him to give security for his surrender to that Court, there to answer the charge and to be dealt with according to law.

Where any person is to be so sent in custody, a warrant shall be issued by the Court within whose district he is found, and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named, and to carry him to and deliver him up to the Court within whose district the offence was committed, according to the warrant.

55.—(1.) In cases of murder or manslaughter if either the death, or the criminal act which wholly or partly caused the death, happened within the jurisdiction of a Court acting under this Order, that Court shall have the like jurisdiction over any British subject who is charged either as the principal offender, or as accessory before the fact to murder, or as accessory after the fact to murder or manslaughter, as if both the criminal act and the death had happened within that jurisdiction.

(2.) In the case of any offence committed on the high seas, or within the Admiralty jurisdiction, by any British subject on board a British ship, or on board a foreign ship to which he did not belong, the Court shall, subject to the provisions of this Order, have jurisdiction as if the offence had been committed within the jurisdiction of that Court. In cases tried under this Article no different sentence can be passed from the sentence which could be passed in England if the offence were tried there.

(3.) The foregoing provisions of this Article shall be deemed to be adaptations, for the purposes of this Order, and of "The Foreign Jurisdiction Act, 1890," of the following enactments, that is to say:—

"The Admiralty Offences (Colonial) Act, 1849."

"The Admiralty Offences (Colonial) Act, 1860."

"The Merchant Shipping Act, 1894," section 686.

56. Where the Supreme Court or a Provincial Court issues a summons or warrant against any person on a charge of an offence committed on board of or in relation to a British ship, then, if it appears to the Court that the interests of public justice so require, that Court may issue a warrant or order for the detention of the ship, and may cause the ship to be detained accordingly, until the charge is heard and determined, and the order of the Court thereon is fully executed, or for such shorter time as

the Court thinks fit; and the Court shall have power to make all such orders as appear to it necessary or proper for carrying this provision into effect.

57. Any act which, if done in the United Kingdom or in a British possession, would be an offence against any of the following Statutes of the Imperial Parliament, or Orders in Council, that is to say:—

"The Merchandise Marks Act, 1887;"

"The Patents, Designs, and Trade Marks Acts, 1883 to 1888;"

Any Act, Statute, or Order in Council for the time being in force relating to copyright, or to inventions, designs, or trade-marks;

Any Statute amending or substituted for any of the above-mentioned Statutes:—

Shall, if done by a British subject in the Ottoman dominions, be punishable as a grave offence against this Order, whether such Act is done in relation to any property or right of a British subject, or of a foreigner, or native, or otherwise, howsoever:—

Provided—

(1.) That a copy of any such Statute or Order in Council shall be published in the public office of the Consulates at Constantinople and Alexandria, and shall be there open for inspection by any person at all reasonable times; and a person shall not be punished under this Article for anything done before the expiration of one month after such publication, unless the person offending is proved to have had express notice of the Statute or Order in Council.

(2.) That a prosecution by or on behalf of a prosecutor who is not a British subject shall not be entertained unless the Court is satisfied that effectual provision exists for the punishment in Consular or other Courts in the Ottoman dominions of similar acts committed by the subjects of the State or Power of which such prosecutor is a subject, in relation to, or affecting the interests of, British subjects.

58.—(1.) The Supreme Court shall, when required by the Secretary of State, send to him a report of the sentence of the Court in any case tried before that Court with a jury or assessors, with a copy of the Minutes and notes of evidence, and with any observations which the Court thinks fit to make.

(2.) Every Provincial Court shall, in accordance with Rules to be made under this Order, send to the Supreme Court a report of the sentence of the Court in every case tried by the Court with assessors, with such Minutes, notes of evidence, and other documents as such Rules may direct, and with any observations which the Court thinks fit to make.

59.—(*a*) The Court shall have and discharge all the powers, rights, and duties appertaining to the office of Coroner in England, in relation not only to deaths of British subjects happening in the district of the Court, but also to deaths of any persons having happened at sea on board British ships arriving in the district, and to deaths of British subjects having happened at sea on board foreign ships so arriving.

(*b*) Every inquest shall be held with a jury of not less than three persons comprised in the jury list of the Court summoned for that purpose.

(*c*) If any person fails to attend according to such summons, he shall be liable to a fine not exceeding the fine to which he would be liable in case of failure to attend as a juror in civil or criminal proceedings.

(*d*) In this Article the expression "the Court" includes the Registrar of the Supreme Court, but does not include a Local Court.

60.—(1.) Where it is proved that there is reasonable ground to apprehend that a British subject is about to commit a breach of the public peace,—or that the acts or conduct of a British subject are or is likely to produce or excite to a breach of the public peace,—the Court may, if it thinks fit, cause him to be brought before it and require him to give security to the satisfaction of the Court, to keep the peace, or for his future good behaviour, as the case may require;

(2.) Where a British subject is convicted of an offence before the Court, or before a Court in the sentence of which one of Her Majesty's Consular officers concurs, the Court for the district in which he is may, if it thinks fit, require him to give security to the satisfaction of the Court for his future good behaviour, and for that purpose may (if need be) cause him to be brought before the Court;

(3.) In either of the foregoing cases, if the person required to give security fails to do so, the Court may order that he may be deported from the Ottoman dominions to such place as the Court directs.

(4.) The place shall be a place in some part (if any) of Her Majesty's dominions out of the United Kingdom to which the person belongs, or the Government of which consents to the reception of persons deported under this Order, or in some part of a Protectorate of Her Majesty appointed by the Secretary of State.

(5.) A Provincial Court shall report to the Supreme Court any order of deportation made by it, and the grounds thereof, before the order is executed. The Supreme Court may reverse the order, or may confirm it with or without variation, and in case of confirmation, shall direct it to be carried into effect.

(6.) The person to be deported shall be detained in custody until a fit opportunity for his deportation occurs.

(7.) He shall, as soon as is practicable,—and in the case of a person convicted, either after execution of the sentence or while it is in course of execution,—be embarked in custody under the warrant of the Supreme Court, or, in Egypt (during the absence of a Judge of the Supreme Court), of the Provincial Court at Alexandria, on board one of Her Majesty's vessels of war, if there is no such vessel available, then on board any British or other fit vessel bound to the place of deportation.

(8.) The warrant shall be sufficient authority to the commander or master of the vessel to receive and detain the person therein named, and to carry him to and deliver him up at the place named, according to the warrant.

(9.) The Court may order the person to be deported to pay all or any part of the expenses of his deportation. Subject thereto, the expenses of deportation shall be defrayed in such manner as the Secretary of State, with the concurrence of the Treasury, may direct.

(10.) The Supreme Court shall forthwith report to the Secretary of State any order of deportation made or confirmed by it and the grounds thereof, and shall also inform the Ambassador, or, if in Egypt, Her Majesty's Agent.

(11.) If any person deported under this or any former Order returns to the Ottoman dominions without permission in writing of the Secretary of State (which permission the Secretary of State may give) he shall be deemed guilty of a grave offence against this Order; and he shall also be liable to be forthwith again deported.

(12.) A Local Court shall not exercise any jurisdiction under this Article.

61.—(1.) Where a person is convicted before a Provincial or Local Court—

(*a*) If he considers the conviction erroneous in law, then, on his application, within the prescribed time (unless it appears merely frivolous, when it may be refused); or

(*b*) If the Provincial or Local Court thinks fit to reserve for consideration of the Supreme Court any question of law arising on the trial;

the Provincial or Local Court shall state a case, setting out the facts and the grounds of the conviction, and the question of law, and send it to the Supreme Court.

(2.) Thereupon the Provincial or Local Court shall, as it thinks fit, either postpone judgment on the conviction, or respite execution of the judgment, and either commit the person convicted to prison, or take security for him to appear and receive judgment or to deliver himself for execution of the judgment (as the case may require) at an appointed time and place.

(3.) The Supreme Court, sitting without a jury or assessors, shall hear and finally determine the matter, and thereupon shall reverse, affirm, or amend the judgment given, or set it aside, and order an entry to be made in the Minutes that in the judgment of the Supreme Court the person ought not to have been convicted, or order judgment to be given at a subsequent sitting of the Provincial or Local Court, or make such other order as the Supreme Court thinks just, and shall also give all necessary and proper consequential directions.

(4.) The judgment of the Supreme Court shall be delivered in open Court, after the public hearing of any argument offered on behalf of the prosecutor or of the person convicted.

(5.) Before delivering judgment, the Supreme Court may, if necessary, cause the case to be amended by the Provincial or Local Court.

(6.) The Supreme Court shall not annul a conviction or sentence, or vary a sentence, on the ground—

(*a*) Of any objection which, if stated during the trial, might, in the opinion of the Supreme Court, have been properly met by amendment by the Provincial or Local Court; or

(*b*) Of any error in the summoning of Assessors; or

(*c*) Of any person having served as Assessor who was not qualified; or

(*d*) Of any objection to any person as Assessor which might have been raised before or at the trial; or

(*e*) Of any informality in the swearing of any witness; or

(*f*) Of any error or informality which, in the opinion of the Supreme Court, did not affect the substance of the case or subject the convicted person to any undue prejudice.

62. There shall be no appeal in a criminal case to Her Majesty the Queen in Council from a decision of the Supreme Court, except by special leave of Her Majesty in Council.

Part IV.—Civil Matters.

63. Subject to the provisions of this Order, the civil jurisdiction of every Court acting under this Order shall, as far as circumstances admit, be exercised on the principles of, and in conformity with, the Statute and other law for the time being in force in and for England.

64.—(1.) Every civil proceeding in the Court shall be taken by action, and not otherwise, and shall be designated an action.

(2.) For the purposes of any statutory enactment or other provision applicable under this Order to any civil proceeding in the Court, an action under this Order shall comprise and be equivalent to a suit, cause, or petition, or to any civil proceeding, howsoever required by any such enactment or provision to be instituted or carried on.

65.—(1.) Every action shall be heard and determined in a summary way.

(2.) Every application in the course of an action may be made to the Court orally, and without previous formality, unless in any case the Court otherwise directs, or the rules of Court otherwise provide.

(3.) No action or proceeding shall be treated by the Court as invalid on account of any technical error or mistake in form or in words.

(4.) All errors and mistakes may be corrected, and times may be extended, by the Court in its discretion, and on such terms as the Court thinks just.

66.—(1.) The sittings of the Court for the hearing of actions shall, where the amount of business so requires, be held on stated days.

(2.) The sittings shall ordinarily be public, but the Court may, for reasons recorded in the Minutes, hear any particular case in the presence only of the parties and their legal advisers and the officers of the Court.

67. Every action shall commence by a summons, issued from the Court, on the application of the plaintiff, and served on the defendant (in this Order referred to as an original summons).

68. The Registrar shall keep a book, called the Action Book, in which all actions brought in the Court shall be entered, numbered consecutively in each year, in the order in which they are commenced, with a short statement of the particulars of each action, and a note of the several proceedings therein.

69.—(1.) An original summons shall not be in force for more than twelve months from the day of its date (including that day).

(2.) If any defendant named therein is not served therewith, the plaintiff may, before the end of the twelve months, apply to the Court for renewal thereof.

(3.) The Court, if satisfied that reasonable efforts have been made to serve the defendant, or for other good reason, may order that the summons be renewed for six months from the date of renewal, and so, from time to time, during the currency of the renewed summons.

(4.) The summons shall be renewed by being re-sealed with the seal of the Court, and a note being made thereon by the Registrar, stating the renewal and the date thereof.

(5.) A summons so renewed shall remain in force and be available to prevent the operation of any statute of limitation, and for all other purposes, as from the date of the original summons.

(6.) The production of a summons purporting to be so renewed shall be sufficient evidence of the renewal and of the commencement of the action, as of the date of the original summons, for all purposes.

70. If an action is not proceeded with and disposed of within twelve months from service of the original summons, the Court may, if it thinks fit, without application by any party, order the same to be dismissed for failure to proceed.

71. The Court may, at any time, if it thinks fit, either on or without application of a defendant, order the plaintiff to put in further particulars of his claim.

72. There shall ordinarily be no written pleadings; but the Court may at any time, if it thinks fit, order the plaintiff to put in a written statement of his claim, or a defendant to put in a written statement of his defence.

73. The evidence on either side may, subject to the direction of the Court, be wholly or partly oral, or on affidavit, or by deposition.

74.—(1.) Subject to the provisions of this Order, every action in the Supreme Court which involves the amount or value of £50 or upwards shall, on the demand of either party in writing, filed in the Court seven days before the day appointed for the hearing, be heard with a jury.

(2.) Any other suit may, on the suggestion of any party, at any stage, be heard with a jury, if the Court thinks fit.

(3.) Any suit may be heard with a jury if the Court, of its own motion, at any stage, thinks fit.

75.—(1.) The Supreme Court may, if it thinks fit, hear any action with Assessors.

(2.) A Provincial Court shall (subject to the provisions of this Order) hear with Assessors every action which involves the amount or value of £300, or upwards.

(3.) In all other cases a Provincial Court may, as it thinks fit, hear the action either with or without Assessors.

76.—(1.) After the issue of a summons by any Court, the decision of that Court may be given upon a special case submitted to the Court by the parties.

(2.) Any decision of a Provincial Court may be given subject to a case to be stated by, or under the direction of, that Court for the opinion or direction of the Supreme Court.

77. The following provisions apply to a Local Court:—

(1.) Such Court shall not exercise jurisdiction where the amount or value involved exceeds £10.

(2.) A Local Court shall, within 14 days after the determination of any action, report the action to the Provincial Court, and transmit to that Court a copy of the proceedings.

(3.) A Local Court shall have power to enforce any order by execution on the goods of the party ordered to pay, and not otherwise.

(4.) An appeal to the Supreme Court from a Local Court shall lie as of course on the appellant making a deposit of £1 for costs to abide the decision on appeal, and execution shall thereupon be suspended.

(5.) After one month from the date of the decision of the Local Court an appeal shall not lie except by leave of the Supreme Court.

(6.) The proceedings with respect to an appeal under this Article shall be conducted as nearly as may be according to the provisions of this Order relating to appeals from Provincial Courts.

(7.) In any case the Supreme Court may, if it thinks fit, on the application of any party, direct that the appeal be heard and determined by the Provincial Court or in the Supreme Court.

78.—(1.) Notwithstanding anything in this Order, the Court (for reasons recorded in the Minutes) may at any time do any of the following things as the Court thinks just:—

(i.) Defer or adjourn the hearing or determination of any action, proceeding, or application.

(ii.) Order or allow any amendment of any pleading or other document.

(iii.) Appoint or allow a time for, or enlarge or abridge the time appointed or allowed for, or allow further time for, the doing of any act or the taking of any proceeding.

(2.) Any order within the discretion of the Court may be made on such terms respecting time, costs, and other matters, as the Court thinks fit.

79.—(1.) The Supreme Court may, if it thinks fit, on the application of any party, or of its own motion, order a rehearing of an action, or of an appeal, or of any arguments on a verdict, or on any other question of law.

(2.) The provisions of this Order respecting a hearing with a jury or Assessors shall extend to a rehearing of an action.

(3.) The Supreme Court may, if it thinks fit, direct any rehearing to be before the full Court.

(4.) If the party applying for a rehearing has by any order been ordered to pay money or do any other thing, the Court may direct either that the order be carried into execution or that the execution thereof be suspended pending the rehearing, as it thinks fit.

(5.) If the Court directs the order to be carried into execution, the party in whose favour it is given shall before the execution give security to the satisfaction of the Court for performance of such order as shall be made on the rehearing.

(6.) If the Court directs the execution of the order to be suspended, the party against whom it is given shall, before an order for suspension is given, give security to the satisfaction of the Judge for performance of such order as shall be made on the rehearing.

(7.) An application for rehearing shall be made within the prescribed time.

80. Subject to the provisions of this Order and the Rules of Court, the costs of, and incident to, all proceedings in the Court shall be in the discretion of the Court, provided that if the action is tried with a jury the costs shall follow the event, unless the Court shall for good cause (to be entered in the Minutes) otherwise order.

81.—(1.) A Minute of every order, whether interlocutory or final, shall be made by the Court in the Minutes of Proceedings at the time when the Judgment or order is given or made.

(2.) Every such Minute shall have the full force and effect of a formal order.

(3.) The Court may at any time order a formal order to be drawn up on the application of any party.

82. Where the Court delivers a decision in writing, the original, or a copy thereof, signed by the Judge or officer holding the Court, shall be filed in the proper office of the Court with the papers in the action.

83.—(1.) An order shall not be drawn up in form except on the application of some party to the action, or by direction of the Court, and shall then be passed and be certified by the affixing thereto of the seal of the Court, and it shall then be deemed to form part of the record in the action.

(2.) An order shall not be enforced or appealed from, nor shall an office copy of it be granted, until it forms part of the record.

(3.) An order shall bear the date of the day of the delivery of the decision on which the order is founded.

(4.) Any party to an action or proceeding is entitled to have an office copy of any order made therein.

84.—(1.) Ordinarily, an order of a Provincial or Local Court shall not be enforced out of the Consular district of the Consular officer making the order.

(2.) Where, however, a Provincial Court thinks that the urgency or other peculiar circumstances of the case so require, that Court may, for reasons recorded in the Minutes, order that any particular order be enforced out of the particular district.

85. All money ordered by the Court to be paid by any person shall be paid into an office of the Court, unless the Court otherwise directs.

86. Where money ordered by the Court to be paid is due for seamen's wages, or is other money recoverable under "The Merchant Shipping Act, 1894," or other law relating to ships, and the person ordered to pay is master or owner of a ship, and the money is not paid as ordered, the Court in addition to other powers for compelling payment, shall have power to direct that the amount unpaid be levied by seizure and sale of that ship.

87. Where an order ordering payment of money remains wholly or in part unsatisfied, whether an execution order has been made or not, the person prosecuting the order (in this order called the judgment creditor) may apply to the Court for an order ordering the person to whom payment is to be made (in this Order called the judgment debtor) to appear and be examined respecting his ability to make the payment; and the Court shall, unless it sees good reason to the contrary, make an order accordingly.

Where the order for the payment of money was made by a Local Court, the application under this Article shall be made to the Provincial Court.

88.—(1.) On the appearance of the judgment debtor, he may be examined on oath by or on behalf of the judgment creditor, and by the Court, respecting his ability to pay the money ordered to be paid, and for discovery of property applicable thereto, and respecting his disposal of any property.

(2.) He shall produce, on oath or otherwise, all books, papers, and documents in his possession or power relating to any property applicable to payment.

(3.) Whether the judgment debtor appears or not, the judgment creditor, and any witness whom the Court thinks requisite, may be examined, on oath or otherwise, respecting the same matters.

(4.) The Court may, if it thinks fit, adjourn the examination from time to time, and require from the judgment debtor such security for his appearance as the Court thinks fit: and, in default of his finding security, may, by order, commit him to the custody of an officer of the Court, there to remain until the adjourned hearing, unless sooner discharged.

89. If it appears to the Court, by the examination of the judgment debtor or other evidence, that the judgment debtor then has sufficient means to pay the money directed to be paid by him, and he refuses or neglects to pay the same according to the order, then and in any such case the Court may, if it thinks fit, by order, commit him to prison for any time not exceeding forty days.

90. On the examination, the Court, if it thinks fit, whether it makes

an order for eommitment or not, may reseind or alter any order for the payment of money by instalments or otherwise, and may make any further or other order, either for the payment of the whole amount forthwith, or by instalments, or in any other manner, as the Court thinks fit.

91.—(1.) The expenses of the judgment debtor's maintenanee in prison shall be defrayed in the first instanee by the judgment ereditor, and may be reeovered by him from the judgment debtor, as the Court direets.

(2.) The expenses shall be estimated by the Court, and shall be paid by the judgment ereditor at sueh times and in sueh manner as the Court direets.

(3.) In default of payment the judgment debtor may be diseharged, if the Court thinks fit.

92. Imprisonment of a judgment debtor under the foregoing provisions does not operate as a satisfaetion or extinguishment of the debt or liability to whieh the order relates, or proteet the debtor from being anew imprisoned for any new default making him liable to be imprisoned, or deprive the judgment ereditor of any right to have exeeution against his goods, as if there had not been sueh imprisonment.

93. The judgment debtor, on paying at any time the amount ordered to be paid, and all eosts and expenses, shall be diseharged.

94.—(1.) Where the order of the Court is one ordering some aet to be done other than payment of money, there shall be indorsed on the eopy of it served on the person required to obey it a memorandum in the words or to the effeet following:—

> If you, the within-named A. B., negleet to obey this order within the time therein appointed, you will be liable to be arrested and your property may be sequestered.

(2.) Where the person directed to do the aet fails to do it aeeording to the order, the person proseeuting the order may apply to the Court for another order for the arrest of the disobedient person.

(3.) Thereupon the Court may make an order ordering and empowering an offieer of the Court therein named to take the body of the disobedient person and detain him in eustody until further order.

(4.) He shall be liable to be detained in eustody until he has obeyed the order in all things that are to be immediately performed, and given sueh seeurity, as the Court thinks fit, to obey the order in other respeets (if any) at the future times thereby appointed.

95. If the debtor, against whom a warrant of arrest issues, eannot be found, or is taken or detained in eustody without obeying the order, the person prosecuting the order may apply to the Court for an order of sequestration against his property.

96.—(1.) On proof of great urgeney or other peeuliar eireumstanees, the Court may, if it thinks fit, before serviee of a writ or summons in an aetion, and without notice, make an order of injunetion, or an order to sequester money or goods, or to stop the elearanee of a vessel, or to hold to bail, or to attaeh property.

(2.) Before making the order the Court shall require the person applying for it to enter into a recognisance, with or without a surety or sureties, as the Court thinks fit, as security for his being answerable in damages to the person against whom the order is sought.

(3.) The order shall not remain in force more than twenty-four hours, and shall, at the end of that time, wholly cease to be in force, unless within that time an action is regularly brought by the person obtaining the order.

(4.) The order shall be dealt with in the action as the Court thinks fit.

97.—(1.) An order to hold to bail shall state the amount, including costs, for which bail is required.

(2.) It shall be executed forthwith.

(3.) The person arrested under it shall be entitled to be discharged from custody under it on bringing into Court the amount stated in the order, to abide the event of such action as may be brought, or on entering into a recognisance, without or with a surety or sureties, as the Court thinks fit, as security that he will abide by the orders of the Court in any action brought.

(4.) He shall be liable to be detained in custody under the order for not more than seven days, if not sooner discharged; but the Court may, from time to time, if it thinks fit, renew the order.

(5.) No person, however, shall be kept in custody under any such order and renewed order for a longer time, in the whole, than thirty days.

98.—(1.) Where an action is brought for the recovery of a sum exceeding £5, and it is proved that the defendant is about to abscond for the purpose of defeating the plaintiff's claim, the Court may, if it thinks fit, order that he be arrested and delivered into safe custody, to be kept until he gives bail or security, with a surety or sureties, in such sum, expressed in the order, as the Court thinks fit, not exceeding the probable amount of debt, or damages, and costs to be recovered in the action, that he will appear at any time when called on, while the action is pending, and until execution or satisfaction of any order made against him, and that, in default of appearance, he will pay any money and costs which he is ordered to pay in the action.

(2.) The expenses incurred for the subsistence of the defendant while under arrest shall be paid by the plaintiffs in advance at such rate and in such amounts as the Court directs; and the total amount so paid may be recovered by the plaintiff in the action, unless the Court otherwise directs.

(3.) The Court may at any time, on reasonable cause shown, discharge or vary the order.

99.—(1.) Where it is proved that the defendant, with intent to obstruct or delay the execution of any order obtained or to be obtained against him, is about to remove any property out of the jurisdiction of the Court, the Court may, if it thinks fit, on the application of the plaintiff, order that property to be forthwith seized and secured.

(2.) The Court may at any time, on reasonable cause shown, discharge or vary the order.

100.—(1.) On proof of great urgency or other peculiar circumstances, after an action is brought, the Court may, if it thinks fit, on the application of a plaintiff, or of its own motion, make an order for stopping the clearance of, or for the arrest and detention of, a vessel about to leave the district, other than a vessel enjoying immunity from civil process.

(2.) The Court may at any time, on reasonable cause being shown, discharge or vary the order.

101.—(1.) If it appears to the Court that any order made under any of the last four foregoing Articles of this Order was applied for on insufficient grounds, or if the plaintiff's action fails, or judgment is given against him, by default or otherwise, and it appears to the Court that there was no sufficient ground for his bringing the action, the Court may, if it thinks fit, on the application of the defendant, order the plaintiff to pay to the defendant such amount as appears to the Court to be a reasonable compensation to the defendant for the expense and injury occasioned to him by the execution of the order.

(2.) Payment of compensation under this Article is a bar to any action for damages in respect of anything done in pursuance of the order, and any such action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks fit.

102.—(1.) Any agreement in writing between any British subjects to submit present or future differences to arbitration, whether an arbitrator is named therein or not, may be filed in the Court by any party thereto, and unless a contrary intention is expressed therein, shall be irrevocable, and shall have the same effect as an order of the Court.

(2.) Every such agreement is in this Order referred to as a submission.

(3.) If any action is commenced in respect of any matter covered by a submission, the Court, on the application of any party to the action, may by order stay the action.

103.—(1.) In any action—

(*a*) If all parties consent; or

(*b*) If the matters in dispute consist wholly or partly of matters of account, or require for their determination prolonged examination of documents or any scientific or local examination,

the Court may at any time refer the whole action, or any question or issue arising therein, for inquiry and report, to the Registrar or any special referee.

(2.) The Report of the Registrar or special referee may be adopted wholly or partially by the Court, and if so adopted may be enforced as a judgment of the Court.

(3.) The Court may also in any case, with the consent of both parties to an action, or of any parties between whom any questions in the action arise (such consent being signified by a submission) refer the action or the portions referred to in the submission to arbitration, in such manner and upon such terms as it shall think reasonable or just.

(4.) In all cases of reference to a Registrar, special Referee, or Arbitrator, under any order of the Court, the Registrar, special Referee, or Arbitrator shall be deemed to be an officer of the Court, and shall have such powers

and authority, and shall conduct such reference or arbitration in such manner as may be prescribed by any rules of Court, and subject thereto as the Court may direct.

104. Subject to the Rules of Court, the Court shall have authority to enforce any submission, or any award made thereunder, and to control and regulate the proceedings before and after the award, in such manner and on such terms as the Court thinks fit.

105.—(1.) Each Court shall, as far as circumstances admit, have, for and within its own district, with respect to the following classes of persons being either resident in the Ottoman dominions, or carrying on business there, namely, resident British subjects and their debtors and creditors, being British subjects, or Ottoman subjects or foreigners submitting to the jurisdiction of the Court, all such jurisdiction in bankruptcy as for the time belongs to the High Court and the County Courts in England.

(2.) Proceedings in bankruptcy shall be originated by a summons to the party to be made bankrupt to show cause why he should not be adjudicated bankrupt, or by a summons issued by a debtor himself to his creditor, or any of his creditors, to show cause why he (the debtor) should not be adjudicated bankrupt.

(3.) On or at any time after the issue of such a summons, the Supreme Court may stay any proceedings pending in any Court in any action, execution, or other legal process against the debtor in respect of any debt provable in bankruptcy, or it may allow such proceedings, whether pending at the commencement of the bankruptcy or begun during the continuance of the bankruptcy, to proceed on such terms as the Court thinks fit.

(4.) The Court may, on or at any time after the issue of such a summons, appoint a receiver or manager of the property or business of the debtor, or of any part thereof, and may direct immediate possession to be taken by an officer of the Court, or under the control of the Court, of that property or business, or of any part thereof.

106.—(1.) The Supreme Court shall have Admiralty jurisdiction for and within the Ottoman dominions and Ottoman waters, and over vessels and persons coming within the same.

(2.) The following enactments of "The Colonial Courts of Admiralty Act, 1890," that is to say, section 2, sub-sections (2) to (4); sections 5 and 6; sections 16, sub-section (3); shall apply to the Supreme Court as if that Court were a Colonial Court of Admiralty, and as if the Ottoman dominions were a British possession; and for the purpose of this application the expressions "judgment" and "appeal" shall in the enactments so applied have the same respective meanings as are assigned thereto in section 15 of the said Act.

(3.) During the absence from Egypt of a Judge of the Supreme Court, the jurisdiction of the Supreme Court under this Article shall, subject to any Rules of Court, be exercised by the Provincial Court at Alexandria.

107. The Supreme Court shall, as far as circumstances admit, have for and within the Ottoman dominions, with respect to British subjects, all such jurisdiction, except the jurisdiction relative to dissolution or nullity or jactitation of marriage, as for the time being belongs to the High Court in England.

108. —(1.) The Supreme Court shall, as far as circumstances admit,

have, for and within the Ottoman dominions, in relation to British subjects, all such jurisdiction relative to the custody and management of the persons and estates of lunatics, as for the time being belongs to the Lord Chancellor or other Judge or Judges in England intrusted by virtue of Her Majesty's Sign Manual with the care and commitment of the custody of the persons and estates of lunaties.

(2.) A Provincial Court shall, as far as circumstances permit, have, in relation to British subjects, such jurisdiction relative to the custody and management of the persons and estates of lunatics as for the time being may be prescribed by rules of Court, and until such rules are made, and so far as such rules do not apply, as may be exercised in England by the judicial authority and by the Masters in Lunacy under the provisions of "The Lunacy Act, 1890," and any Act amending the same.

(3.) In any such case the Provincial Court may, of its own motion, or on the application of any person interested, take or authorize such steps as to the Court may seem necessary or expedient for the immediate protection of the person and property of any person appearing to the Court to be a lunatic, and may, from time to time, revoke, or vary, or supplement any order or proceeding taken in the matter.

(4.) Subject to the provisions of this Article and to any rules of Court, a Provincial Court shall not proceed in any such matter except under and according to the directions of the Supreme Court.

(5.) Sections 5 to 7 of "The Lunatics Removal (India) Act, 1851" (14 & 15 Vict. cap. 81), shall apply to the Ottoman dominions, with the substitution of "the Supreme Court" for "the Supreme Court of Judicature at any of the Presidencies of India." Provided that the jurisdiction of the Supreme Court under those sections may, during the absence of a Judge thereof, be exercised in and for Egypt by the Provincial Court at Alexandria.

109.—(1.) The Supreme Court shall, as far as circumstances admit, have, for and within the Ottoman dominions, with respect to the wills and the property in the Ottoman dominions of deceased British subjects, all such jurisdiction as for the time being belongs to the High Court in England.

(2.) A Provincial Court shall have power to grant probate or letters of administration where there is no contention respecting the right to the grant, and it is proved that the deceased was resident at his death within the particular jurisdiction.

(3.) Probate or administration granted by a Court under this Order shall have effect over all the property of the deceased within the Ottoman dominions, and shall effectually discharge persons dealing with an executor or administrator thereunder, notwithstanding that any defect afterwards appears in the grant.

(4.) Notwithstanding anything in this Order, the Court shall not exercise the jurisdiction conferred by this Article in any case where the deceased, though a protected person, was at the time of his death an Ottoman subject, and in the construction of the provisions of this Order relating to probate and administration, the expression "British subject" shall not include any such protected person.

110. A British subject may in his lifetime deposit for safe custody, in

the Court, his own will, sealed up under his own seal and the seal of the Court.

111.—(1.) Where probate, administration, or confirmation is granted in England, Ireland, or Scotland, and therein, or by a Memorandum thereon signed by an officer of the Court granting the same, the testator or intestate is stated to have died domiciled in England, Ireland, or Scotland (as the case may be), and the probate, administration, or confirmation is produced to, and a copy thereof is deposited with, the Supreme Court, the Court shall write thereon a certificate of that production and deposit under the seal of the Court; and thereupon notwithstanding anything in this Order, the probate, administration, or confirmation shall, with respect to the personal property in the Ottoman dominions of the testator or intestate, have the like effect as if he had been resident in those dominions at his death, and probate or administration to his personal property there had been granted by the Supreme Court.

(2.) Any person who, in reliance on an instrument purporting to be a probate, administration, or confirmation granted in England, Ireland, or Scotland, and to bear such a certificate of the Supreme Court as in this Article prescribed, makes or permits any payment or transfer, in good faith, shall be, by virtue of this Order, indemnified and protected in respect thereof, in the Ottoman dominions, notwithstanding anything affecting the validity of the probate, administration, or confirmation.

(3.) The following shall be the terms of the certificate of the Supreme Court in this Article prescribed, namely :—

This probate has [*or* these letters of administration have, *or* this confirmation has] been produced in this Court, and a copy thereof has been deposited with this Court.

112. Section 51 of "The Conveyancing (Scotland) Act, 1874," and any enactment for the time being in force amending or substituted for the same, are hereby extended to the Ottoman dominions, with the adaptation following, namely :—

The Supreme Court is hereby substituted for a Court of Probate in a Colony.

113.—(1.) Each Consular officer shall endeavour to obtain, as early as may be, notice of the death of every British subject dying within the particular jurisdiction, whether resident or not, and all such information respecting his affairs as may serve to guide the Court with respect to the securing and administration of his property.

(2.) On receiving notice of the death the Consular officer shall put up a notice thereof at the Court-house, and shall keep the same there until probate or administration is granted, or where it appears to him that probate or administration will not be applied for, or cannot be granted, for such time as he thinks fit.

114.—(1.) Where a British subject resident dies in the Ottoman dominions, or elsewhere, intestate, then, until administration is granted, his personal property in the Ottoman dominions shall be vested in the Judge of the Supreme Court.

(2.) Where a British subject not resident dies in the Ottoman dominions, the Court within whose particular jurisdiction he dies—and where a British

subject resident dies elsewhere, the Court within whose jurisdiction any property of the deceased is situate—shall, where the circumstances of the case appear to the Court so to require, forthwith on his death, or as soon after as may be, take possession of his personal property within the particular jurisdiction, or put it under the seal of the Court (in either case if the nature of the property or other circumstances so require, making an inventory), and so keep it until it can be dealt with according to law.

115. If any person named executor in the will of the deceased takes possession of and administers or otherwise deals with any part of the personal property of the deceased, and does not obtain probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he shall be guilty of an offence and shall be liable to a fine not exceeding £50.

116. If any person, other than the person named executor or an administrator or an officer of the Court, takes possession of and administers or otherwise deals with any part of the personal property of a deceased British subject, whether resident or not, he shall be deemed guilty of a contempt of Court, and shall be liable to a fine not exceeding £50.

117. Where a person appointed executor in a will survives the testator, but either dies without having taken probate, or, having been called on by the Court to take probate, does not appear, his right in respect of the executorship wholly ceases; and, without further renunciation, the representation to the testator and the administration of his property shall go and may be committed as if that person had not been appointed executor.

118.—(1.) Where a British subject dies in the Ottoman dominions, any other such subject having in his possession, or under his control, any paper or writing of the deceased, being or purporting to be testamentary, shall forthwith bring the original to the Court within whose particular jurisdiction the death happens, and deposit it there.

If any person fails to do so for fourteen days after having knowledge of the death of the deceased, he shall be guilty of an offence and liable to a fine not exceeding £50.

(2.) Where it is proved that any paper of the deceased, being or purporting to be testamentary, is in the possession or under the control of a British subject, the Court may, whether a suit or proceeding respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

(3.) Where it appears to the Court that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary (although it is not shown that the paper is in his possession or under his control) the Court may, whether a suit or proceeding for probate or administration is pending or not, order that he be examined respecting it before the Court or elsewhere, and that he do attend for that purpose, and after examination order that he do produce the paper and deposit it in Court.

119.—(1.) A person claiming to be a creditor or legatee, or the next-of-kin, or one of the next-of-kin, of a deceased person may apply for and obtain a summons from the Court requiring the executor or administrator

(as the case may be) of the deceased to attend before the Court and show cause why an order should not be made for the administration of the property under the direction of the Court.

(2.) On proof of service of the summons, or on appearance of the executor or administrator, and on proof of all such other things (if any) as the Court thinks fit, the Court may, if it thinks fit, make an immediate order for such administration.

(3.) The Court shall have full discretionary power to make or refuse any such order, or to give any special directions respecting the carriage or execution of it, and in the case of applications for such an order by two or more different persons or classes of persons, to grant the same to such one or more of the claimants, or classes of claimants, as the Court thinks fit.

(4.) If the Court thinks fit the carriage of the order may subsequently be given to such person, and on such terms, as the Court thinks fit.

(5.) On making such an order, or at any time afterwards, the Court may, if it thinks fit, make any further or other order for compelling the executor or administrator to bring into Court for safe custody all or any part of the money, or securities, or other property of the deceased, from time to time coming to his hands, or otherwise for securing the safe keeping of the property of the deceased, or any part thereof.

(6.) If the extreme urgency or other peculiar circumstances of the case appear to the Court so to require (for reasons recorded in the Minutes), the Court may of its own motion issue such a summons, and make such an order or such orders and cause proper proceedings to be taken thereon.

120.—(1.) In a case of apparent intestacy, where the circumstances of the case appear to the Court so to require (for reasons recorded in the Minutes), the Court may, if it thinks fit, of its own motion, grant administration to an Officer of the Court.

(2.) The officer so appointed shall act under the direction of the Court, and shall be indemnified thereby.

(3.) He shall publish such notices, if any, as the Court thinks fit in the Ottoman dominions, the United Kingdom, India, and elsewhere.

(4.) The Court shall require and compel him to file in the Court his accounts of his administration at intervals not exceeding three months.

(5.) The accounts shall be in all cases audited by the Supreme Court; for which purpose every Provincial Court shall, on the 1st day of February and the 1st day of August in every year, send to the Supreme Court all accounts so filed in the then last-preceding half-year.

(6.) A commission of 5 per cent., or such less amount as the Secretary of State directs, may be charged on an estate administered under this Article, and the amount thereof shall be calculated and applied as the Secretary of State directs.

(7.) All expenses incurred on behalf of the Court in the execution of this Article and the said commission shall be the first charge on the personal property of the deceased in the Ottoman dominions, and the Court shall, by sale of part of that property or otherwise, provide for the discharge of those expenses and the payment of the said commission.

121. Where it appears to the Court that the value of the property or

estate of a deceased person does not exceed £100, the Court may, without any probate or letters of administration, or other formal proceeding, pay thereout any debts or charges, and pay, remit, or deliver any surplus to such persons, subject to such conditions (if any) as the Court thinks proper, and shall not be liable to any action, suit, or proceedings in respect of anything done under this Article. Every proceeding of the Court under this Article shall be recorded in the Minutes.

122.—(1.) Where an action in a Provincial Court involves the amount or value of £50 or upwards, any party aggrieved by any decision of that Court, with or without assessors, in the action shall have the right to appeal to the Supreme Court against the same on the following conditions, namely :—

(i.) The appellant shall give security to the satisfaction of the Provincial Court to an amount not exceeding £100 for prosecution of the appeal, and for payment of any costs that may be ordered by the Supreme Court on the appeal to be paid by the appellant to any person ;

(ii.) The appellant shall pay to the Provincial Court such sum as the Provincial Court thinks reasonable to defray the expense of the making up and transmission of the record to the Supreme Court.

(2.) In any other case a Provincial Court may, if it thinks fit, give leave to appeal on the conditions aforesaid.

(3.) In any case the Supreme Court may give leave to appeal on such terms as it thinks fit.

(4.) After three months from the date of a decision of the Provincial Court, an appeal against it shall not lie except by leave of the Supreme Court.

(5.) After six months from the date of a decision of the Provincial Court, application for leave to appeal against it shall not be entertained by the Supreme Court.

123.—(1.) Where a person ordered to pay money, or to do any other thing, appeals, the Provincial Court shall direct either that the decision appealed from be carried into execution, or that the execution thereof be suspended pending the appeal, as that Court thinks fit.

(2.) If the Provincial Court directs the decision to be carried into execution, the person in whose favour it is given shall, before the execution of it, give security to the satisfaction of the Court for performance of any order to be made on appeal.

(3.) If the Provincial Court directs the execution of the decision to be suspended, the person against whom it is given shall, before an order for suspension is made, give security to the satisfaction of the Provincial Court for performance of such order as shall be made on appeal.

124.—(1.) The appellant shall file an appeal motion-paper in the Provincial Court.

(2.) He may at the same time file any argument which he desires to submit to the Supreme Court in support of the appeal.

(3.) Copies of the motion-paper and the argument (if any) shall be served on such persons as respondents as the Provincial Court directs.

125.—(1.) A respondent may, within the prescribed time after service of the motion-paper, file in the Provincial Court a motion-paper of cross-appeal (if any) and such argument as he desires to submit to the Supreme Court on the appeal and cross-appeal, if any.

(2.) Copies thereof shall be furnished by the Provincial Court to such persons as that Court thinks fit.

126.—(1.) On the expiration of the prescribed time last referred to the Provincial Court shall, without the application of any party, make up the record of appeal, which shall consist of the writ of summons, statements of claim and defence (if any), orders, and proceedings, all written documentary evidence admitted or tendered, or a certified copy thereof, and the notes of the oral evidence, the appeal and cross-appeal motion-paper, and the arguments (if any).

(2.) The several pieces shall be fastened together, consecutively numbered; and the whole shall be secured by the seal of the Court, and be forthwith forwarded by it to the Supreme Court.

(3.) The Provincial Court shall not, except for some special cause, take on itself the responsibility of the charge, or of the transmission to the Supreme Court, of original letters or documents produced in evidence. They shall be returned to the parties producing them; and those parties shall produce the originals, if required by the Supreme Court, at or before the hearing of the appeal.

127.—(1.) After the record of appeal is transmitted, until the appeal is disposed of, the Supreme Court shall be in exclusive possession of the whole action, as between the parties to the appeal.

(2.) Every application in the action, as between the parties to the appeal, shall be made to the Supreme Court, and not to the Provincial Court; but any application may be made through the Provincial Court.

128.—(1.) The Supreme Court shall, after receiving the record of appeal, fix a day for the hearing of the appeal, and shall give notice thereof through the Provincial Court to the parties to the appeal, such a day being fixed as will allow of the parties attending in person or by counsel or solicitor, if they so desire.

(2.) But if all the separate parties to an appeal appear in person before the Supreme Court, or appoint persons there to represent them as their counsel or solicitors in the appeal, and cause the appearance or appointment to be notified to the Supreme Court, the Supreme Court may dispose of the appeal, without being required to give notice through the Provincial Court, to the parties to the appeal, of the day fixed for the hearing thereof.

129. The Supreme Court may, if it thinks fit, require a party to an appeal to appear personally before it on the hearing of the appeal, or on any occasion pending the appeal.

130. It is not open, as of right, to a party to an appeal to adduce new evidence in support of his original case, but a party may allege any material facts that have come to his knowledge after the decision of the Provincial Court, and the Supreme Court may in any case, if it thinks fit, allow or require new evidence to be adduced.

131.—(1.) The Supreme Court may make any orders necessary for determining the real question in controversy in the action as among the parties to the appeal, and for that purpose may amend any defect or error in the record of appeal, and may enlarge the time for any proceeding except as otherwise by this Order expressly provided.

(2.) The Supreme Court may direct the Provincial Court to inquire into, and certify its finding on any question, as between the parties to the appeal, or any of them, which the Supreme Court thinks fit to determine before final judgment is given in the appeal.

(3.) Generally, the Supreme Court shall, as among the parties to the appeal, have as full jurisdiction over the whole action as if it had been originally instituted and prosecuted in the Supreme Court by parties subject to the original jurisdiction of the Supreme Court.

(4.) The Supreme Court may, if it thinks fit, remit the action to the Provincial Court to be reheard, or to be otherwise dealt with as the Supreme Court directs.

(5.) The powers of the Supreme Court under this Order may be exercised, notwithstanding that the appeal is brought against part only of the decision of the Provincial Court.

(6.) Those powers may be exercised in favour of all or any of the parties to the action, although they have not appealed from, or complained of, the decision.

132.—(1.) Notwithstanding anything in this Order, an appeal to the Supreme Court shall not lie from an order of the Provincial Court, made on the application of one party, without notice to the other party.

(2.) But, if any person thinks himself aggrieved by such an order, he may, on notice to the other party, apply to the Provincial Court to vary or discharge the order, and an appeal shall lie from the decision on that application.

133.—(1.) Where a final judgment or order of the Supreme Court made in a civil action involves the amount or value of £500 or upwards, any party aggrieved thereby may, within the prescribed time, or, if no time is prescribed, within fifteen days after the same is made or given, apply by motion to the Supreme Court for leave to appeal to Her Majesty the Queen in Council.

(2.) The applicant shall give security to the satisfaction of the Court to an amount not exceeding £500 for prosecution of the appeal, and for payment of all such costs as may be awarded to any respondent by Her Majesty in Council, or by the Lords of the Judicial Committee of Her Majesty's Privy Council.

(3.) He shall also pay into the Supreme Court a sum estimated by that Court to be the amount of the expense of the making up and transmission to England of the transcript of the record.

(4.) If security and payment are so given and made within one month from the filing of the motion-paper for leave to appeal, then, and not otherwise, the Supreme Court shall give leave to appeal, and the appellant shall be at liberty to prefer and prosecute his appeal to Her Majesty in Council according to the rules for the time being in force respecting appeals to Her Majesty in Council from her Colonies, or such other rules as Her Majesty

in Council from time to time thinks fit to make concerning appeals from the Supreme Court.

(5.) In any case the Supreme Court, if it considers it just or expedient to do so, may give leave to appeal on the terms and in the manner aforesaid.

134.—(1.) Where leave to appeal to Her Majesty in Council is applied for by a person ordered to pay money or do any other act, the Supreme Court shall direct either that the order appealed from be carried into execution, or that the execution thereof be suspended pending the appeal, as the Court thinks just.

(2.) If the Court directs the order to be carried into execution, the person in whose favour it is made shall, before the execution of it, give security to the satisfaction of the Court for performance of such order as Her Majesty in Council may think fit to make.

(3.) If the Court directs the execution of the order to be suspended, the party against whom it is given shall, before an order for suspension is made, give security to the satisfaction of the Court for performance of such order as Her Majesty in Council may think fit to make.

135. This Order shall not affect the right of Her Majesty at any time, on the humble petition of a person aggrieved by a decision of the Supreme Court, to admit his appeal thereon on such terms and in such manner as Her Majesty in Council may think fit, and to deal with the decision appealed from in such manner as may be just.

Part V.—Procedure, Criminal and Civil.

136. It shall be lawful for the Supreme Court to make Rules of Court and to prescribe Forms of Procedure as to all civil or criminal matters, subject to the approval of the Secretary of State.

Until such rules and forms have been made, or in relation to matters to which they do not extend, a Court may adopt and use any procedure or forms heretofore in use in the Consular Courts in the Ottoman dominions, or any Regulations or Rules made thereunder and in force immediately before the commencement of this Order, with any modifications or adaptations which may be necessary.

No proceeding shall be invalidated by any informality, mistake, or omission, so long as in the opinion of any Court before which any question arises, the essential requisites of law and justice have been complied with.

Provision may, amongst other things, be made by rules under this Article—

(*a*) For authorizing the Court to grant and enforce search warrants;

(*b*) For regulating the procedure in the case of references or arbitrations before Registrars, special Referees or Arbitrators appointed by the Court and for enforcing awards;

(*c*) For enforcing by distress, or by attachment, or commitment, judgments or orders of the Court, or payment of any damages, costs, penalties, fines, or forfeitures;

(*d*) For the sale of things forfeited;

(*e*) For garnishee process;

(*f*) For attachments of property in order to compel appearance or submission to the jurisdiction or process of the Court, and authorizing the Court to compel, by fine, distress, or recognisance, on in default of security by commitment, the attendance of witnesses before the Court, or before a Colonial or other Court to which a case is sent for trial;

(*g*) For regulating the mode in which legal practitioners are to be admitted to practise as such, and for withdrawing the right to practise on grounds of misconduct;

(*h*) For prescribing and enforcing the fees to be taken in respect of any proceedings under this Order, not exceeding, as regards any matters provided for by "The Consular Salaries and Fees Act, 1891," fees fixed and allowed from time to time by any Order in Council made under that Act;

(*i*) For prescribing a scale of payments to be made to a complainant or witness, or a jury or Assessors (in criminal cases only), and the conditions upon which an order may be made by the Court for such payments;

(*j*) For prescribing scales of costs to be paid to practitioners;

(*k*) For taking and transmitting depositions of witnesses for use at trials in a Colony or in England.

Provided that the scales of all fees, expenses, and costs prescribed under the provisions of this Order shall have been sanctioned by the Treasury.

Provided also that any legal practitioner, whose right to practise before the Supreme Court has been withdrawn, shall be entitled to appeal to Her Majesty in Council.

137.—(1.) The Court may, in any case, if it thinks fit, on account of the poverty of a party, or for any other reason, provisionally dispense with the payment of any fee in whole or in part.

(2.) Payment of fees payable under any rules to be made in pursuance of this Order, and of costs and of charges and expenses of witnesses, prosecutions, punishments, and deportations, and of other charges and expenses, and of fines respectively payable under this Order, may be enforced under order of the Court by seizure and sale of goods, and, in default of sufficient goods, by imprisonment as a civil prisoner for a term not exceeding one month, but such imprisonment shall not operate as a satisfaction or extinguishment of the liability.

(3.) Any bill of sale or mortgage, or transfer of property made with a view of avoiding seizure or sale of goods or ship under any provision of this Order shall not be effectual to defeat the provisions of this Order.

138.—(1.) Every summons, order, and other document issuing from the Court shall be in English, French, or Italian.

(2.) Every pleading and other document filed in the Court in a civil or criminal proceeding by a party thereto shall be in English, or French, or Italian.

(3.) Every affidavit used in the Court shall be in English, or in the ordinary language of the person swearing it.

(4.) An affidavit in any language other than English, or French, or Italian shall be accompanied by a sworn translation into English, or French, or Italian, procured by and at the expense of the person using the affidavit.

(5.) Where there is a jury all the proceedings before the jury shall be conducted in English—evidence, if given in any other language, being interpreted.

139.—(1.) Summonses, orders, and other documents issuing from the Supreme Court, shall be sealed with the seal of that Court.

(2.) Those issuing from a Provincial or Local Court shall be sealed with the official seal of the Consular officer by whom they are issued.

140.—(1.) In every case, civil or criminal, Minutes of the proceedings shall be drawn up, and shall be signed by the Judge or Consular officer before whom the proceedings are taken, and shall, where the trial is held with Assessors, be open for their inspection and for their signature if concurred in by them.

(2.) These Minutes, with the depositions of witnesses, and the notes of evidence taken at the hearing or trial by the Judge or Consular officer, shall be preserved in the public office of the Court.

141.—(1.) Every person doing an act or taking a proceeding in the Court as plaintiff in a civil case, or as making a criminal charge against another person, or otherwise, shall do so in his own name and not otherwise, and either—

(*a*) By himself; or

(*b*) By a legal practitioner; or

(*c*) By his attorney or agent thereunto lawfully authorized in writing and approved by the Court.

(2.) Where the act is done or proceeding taken by an attorney (other than a legal practitioner), or by an agent, the power of attorney, or instrument authorizing the agent, or an anthenticated copy thereof, shall be first filed in the Court.

(3.) Where the authority has reference only to the particular proceeding, the original document shall be filed.

(4.) Where the authority is general, or has reference to other matters in which the attorney, or agent is empowered to act, an authenticated copy of the document may be filed.

142.—(1.) In any case, criminal or civil, and at any stage thereof, the Court, either of its own motion or on the application of any party, may summon a British subject to attend to give evidence, or to produce documents, or to be examined.

(2.) If the person summoned, having reasonable notice of the time and place at which he is required to attend, and his reasonable expenses having been paid or tendered, fails to attend and be sworn, and give

evidence, or produce documents, or submit to examination accordingly, and does not excuse his failure to the satisfaction of the Court, he shall be guilty of an offence against this Order.

(3.) A person punished under this Article shall not be liable to an action in respect of the same matter: and any such action, if begun, shall be stayed by the Court in such a manner and on such terms as the Court thinks fit.

(143.) If, in a criminal case, a witness appearing before the Court, either in obedience to a summons, or on being brought up under a warrant, refuses to take an oath, or, having taken an oath, to answer any question put to him, and does not excuse his refusal to the satisfaction of the Court, he shall be guilty of an offence, and shall be liable to be forthwith committed to prison, for not more than seven days.

144. The following Acts, namely :—

"The Foreign Tribunals Evidence Act, 1856,"

"The Evidence by Commission Act, 1859,"

"The Evidence by Commission Act, 1885," or so much thereof as is for the time being in force, and any enactment for the time being in force amending or substituted for the same, are hereby extended to the Ottoman dominions, with the adaptations following, namely—

In the said Acts the Supreme Court is hereby substituted for a Supreme Court in a Colony.

145. The following Acts, namely :—

"The British Law Ascertainment Act, 1859."

"The Foreign Law Ascertainment Act, 1861," or so much thereof as is for the time being in force, and any enactment for the time being in force amending or substituted for the same, are hereby extended to the Ottoman dominions, with the adaptation following, namely—

In the said Acts the Supreme Court is hereby substituted for a Superior Court in a Colony.

146. If in any case, civil or criminal, a British subject wilfully gives false evidence on oath in the Court, or on a reference, he shall be deemed guilty of wilful and corrupt perjury.

147. The Supreme Court may, if it thinks fit, order that a Commission do issue for examination of witnesses at any place out of the Ottoman dominions, on oath, by interrogatories or otherwise, and may, by order, give such directions touching the time, place, and manner of the examination, or anything connected therewith, as to the Court appear reasonable and just.

148.—(1.) Every male resident subject—being of the age of 21 years or upwards—having a competent knowledge of the English language—having or earning a gross income at such rate as may be fixed by Rules of Court, not having been attainted of treason or felony, or convicted of any crime that is infamous (unless he has obtained a free pardon)—and not being under outlawry—shall be qualified to serve on a jury.

(2.) All persons so qualified shall be liable so to serve, except the following:—

Persons in Her Majesty's Diplomatic, Consular, or other Civil Service, in actual employment;

Officers, clerks, keepers of prisons, messengers, and other persons attached to or in the service of the Court;

Officers and others on full pay in Her Majesty's navy or army, or in actual employment in the service of any Department connected therewith;

Persons holding appointments in the Civil, naval, or military service of the Sublime Ottoman Porte;

Clergymen and ministers in the actual discharge of professional duties;

Legal practitioners in actual practice;

Physicians, surgeons, and apothecaries in actual practice;

Persons disabled by mental or bodily infirmity.

(3.) A jury shall consist of five jurors.

(4.) In civil and in criminal cases the like challenges shall be allowed as in England—with this addition, that in civil cases each party may challenge three jurors peremptorily.

(5.) A jury shall be required to give an unanimous verdict.

(6.) Where there is to be a hearing with a jury, the Court shall summon so many of the persons comprised in the jury list, not fewer than twelve, as seem requisite.

(7.) Any person failing to attend according to the summons shall be deemed guilty of a contempt of Court, and shall be liable to a fine not exceeding £10.

149.—(1.) An Assessor shall be a competent and impartial subject, of good repute, resident in the district of the particular Court, and nominated and summoned by the Court for the purpose of acting as Assessor.

(2.) In the Supreme Court there may be one Assessor or two Assessors, as the Court thinks fit.

(3.) In a Provincial Court there shall ordinarily be not fewer than two, and not more than four, Assessors. Where, however, by reason of local circumstances, the Court is able to obtain the presence of one Assessor only, the Court may, if it thinks fit, sit with one Assessor only: and where, for like reasons, the Court is not able to obtain the presence of any Assessor, the Court may, if it thinks fit, sit without an Assessor—the Court, in every case, recording in the Minutes its reasons for sitting with one Assessor only or without an Assessor.

(4.) An Assessor shall not have any voice in the decision of the Court in any case, civil or criminal; but an Assessor dissenting, in a civil case, from any decision of the Court, or, in a criminal case, from any decision of the Court or the conviction or the amount of punishment awarded, may record in the Minutes his dissent, and the grounds thereof, and shall be entitled to receive, without payment, a certified copy of the Minutes. An Assessor dissenting shall be entitled to receive, without payment, a certified copy of the Minutes.

Part VI.—Ottoman and Foreign Subjects and Tribunals.

150.—(1.) Where an Ottoman subject or foreigner desires to institute or take in the Court an action against a British subject, or a British subject desires to institute or take in the Court an action against an Ottoman subject or foreigner, the Court shall entertain the same, and shall hear and determine it, either by the Court sitting alone, or, if all parties desire, or the Court, having regard to its jurisdiction, thinks fit to direct, a trial with a jury or Assessors, then with a jury or Assessors, but in all other respects according to the ordinary course of the Court.

(2.) Provided that the Ottoman subject or foreigner, if so required by the Court, first obtains and files in the Court the consent in writing of the competent authority on behalf of the Sublime Ottoman Porte or of his own nation (as the case may be) to his submitting, and does submit, to the jurisdiction of the Court, and, if required by the Court, give security to the satisfaction of the Court, and to such reasonable amount as the Court thinks fit, by deposit or otherwise, to pay fees, damages, costs, and expenses, and abide by and perform such decision as shall be given by the Court or on appeal.

(3.) A cross-action shall not be brought in the Court against a plaintiff, being an Ottoman subject or foreigner who has submitted to the jurisdiction, by a defendant, without leave of the Court first obtained, but the Court may, as a condition of entertaining the plaintiff's action, require his consent to any cross-action or matter of set-off being entertained by the Court.

(4.) The Court before giving leave may require proof from the defendant that his claim arises out of the matter in dispute, and that there is reasonable ground for it, and that it is not made for vexation or delay.

(5.) Nothing in this Article shall prevent the defendant from bringing in the Court any action against the Ottoman subject or foreigner after the termination of the action in which the Ottoman subject or foreigner is plaintiff.

(6.) Where an Ottoman subject or foreigner obtains in the Court an order against a defendant being a British subject, and in another suit that defendant is plaintiff and the Ottoman subject or foreigner is defendant, the Court may, if it thinks fit, on the application of the British subject, stay the enforcement of the order pending that other suit, and may set off any amount ordered to be paid by one party in one suit against any amount ordered to be paid by the other party in the other suit.

(7.) Where a plaintiff, being an Ottoman subject or foreigner, obtains an order in the Court against two or more defendants being British subjects jointly, and in another action one of them is plaintiff and the Ottoman subject or foreigner is defendant, the Court may, if it thinks fit, on the application of the British subject, stay the enforcement of the order pending that other action, and may set off any amount ordered to be paid by one party in one action against any amount ordered to be paid by the other party in the other action, without prejudice to the right of the British subject to require contribution from his co-defendants under the joint liability.

(8.) Where an Ottoman subject or foreigner is co-plaintiff in a suit with a British subject who is within the particular jurisdiction, it shall not be necessary for the Ottoman subject or foreigner to give security for costs, unless the Court so directs, but the co-plaintiff British subject shall be responsible for all fees and costs.

151.—(1.) Where it is proved that the attendance within the particular jurisdiction of a British subject to give evidence, or for any other purpose connected with the administration of justice, is required in a Court or before a judicial officer of the Sublime Ottoman Porte, or of a State in amity with Her Majesty, the Court may, if it thinks fit, in a case and in circumstances in which the Court would require his attendance before the Court, order that he do attend in such Court, or before such judicial officer, and for such purpose as aforesaid.

(2.) If the person ordered to attend, having reasonable notice of the time and place at which he is required to attend, fails to attend accordingly, and does not excuse his failure to the satisfaction of the Court, he shall (independently of any other liability) be guilty of an offence against this Order.

152. When a British subject invokes or submits to the jurisdiction of an Ottoman or Foreign Tribunal, and engages in writing to abide by the decision of such Tribunal, or to pay any fees or expenses ordered by such Tribunal to be paid by him, any Court under this Order may, on such evidence as it thinks fit to require, enforce payment of such fees and expenses in the same manner as if they were fees payable in a proceeding by such person in that Court, and shall pay over or account for the same when levied to the proper Ottoman or foreign authority, as the Court may direct.

153.—(1.) Subject to the Rules, persons competent to be Assessors in any Court under this Order may be required to attend as Assessors in cases in which British subjects are parties before any Ottoman Tribunal; but every Assessor so required must be acquainted with the French or Turkish language.

(2.) Any Rules made by the Supreme Court in pursuance and in accordance with the provisions of this Order may comprise Rules respecting the qualification, selection, appointment, registration, attendance, and remuneration of Assessors in such cases as aforesaid, and respecting the establishment in any part of the Ottoman dominions, and the regulation of a fund, hereinafter called an Assessors' Fund, for the remuneration of Assessors before any Ottoman Tribunals in such part of the Ottoman dominions.

(3.) Such Rules may provide for compelling the service of any qualified person and may prescribe penalties for neglect or refusal, without reasonable excuse, to serve in accordance with the terms of such regulations. Such penalties shall not exceed the equivalent of £5 in respect of any one day.

(4.) Any such penalties shall be recoverable in the Court as a civil debt by any Consular officer, and shall be carried to the Assessors' Fund.

(5.) Every person requiring the attendance of one or more Assessors may be required to pay in advance such fee or fees as the Rules direct.

(6.) The Court may, out of any moneys in its hands arising from

fees of Court or other fees, or moneys received under this Order, advance or pay the amount of the salary or remuneration of an Assessor.

(7.) The Court shall account for all receipts and payments in respect of the Assessors' Fund in such manner as the Secretary of State directs.

154.—(1.) If a British subject—

(i.) Publicly derides, mocks, or insults any religion established or observed within the Ottoman dominions; or

(ii.) Publicly offers insult to any religious service, feast, or ceremony established or kept in any part of those dominions, or to any place of worship, tomb, or sanctuary belonging to any religion established or observed within those dominions, or belonging to the ministers or professors thereof; or

(iii.) Publicly and wilfully commits any act tending to bring any religion established or observed within those dominions, or its ceremonies, mode of worship, or observances, into hatred, ridicule or contempt, and thereby to provoke a breach of the public peace;

He shall be guilty of an offence, and on conviction thereof, before the Supreme Court or a Provincial Court, liable to imprisonment not exceeding two years, with or without hard labour, and with or without a fine not exceeding £100, or to a fine alone not exceeding £100.

(2.) Notwithstanding anything in this Order, every charge under this Article shall be heard and determined by the Court alone, without jury or assessors, and any Provincial Court shall have power to impose the punishment aforesaid.

(3.) Consular officers shall take such precautionary measures as seem to them proper and expedient for the prevention of such offences.

155.—(1.) If a British subject—

(i.) Smuggles, or attempts to smuggle, out of the Ottoman dominions, any goods on exportation whereof a duty is payable to the Ottoman or Egyptian Government;

(ii.) Imports or exports, or attempts to import or export, into or out of the Ottoman dominions any goods, intending and attempting to evade payment of duty payable thereon to the Ottoman or Egyptian Government;

(iii.) Imports or exports, or attempts to import or export, into or out of the Ottoman dominions, any goods the importation or exportation whereof into or out of the Ottoman dominions is prohibited by law;

(iv.) Without a proper licence, sells, or attempts to sell, or offers for sale, in the Ottoman dominions, any goods whereof the Ottoman or Egyptian Government has by law a monopoly;

In each of the four cases aforesaid he shall be guilty of a grave offence against this Order.

(2.) Where a person is charged with such an offence as in this Article is mentioned, the Court may seize the goods in relation to which the alleged offence was committed, and may hold the same until after the hearing of the charge.

(3.) If a person so charged is convicted, then those goods, whether they have been so seized or not, shall be forfeited to Her Majesty the Queen; and the Court shall either deliver them to the proper Ottoman or Egyptian officer, for the use of the Ottoman or Egyptian Government, as the case may be, or shall dispose of them otherwise, as the Court thinks fit.

156.—(1.) Where by agreement among the Diplomatic or Consular Representatives in the Ottoman dominions of foreign States, or some of them, in conjunction with the Ottoman or Egyptian authorities, sanitary, or police, or port, or game, or other regulations are established, and the same, as far as they affect British subjects, are approved by the Secretary of State, the Court may, subject and according to the provisions of this Order, entertain any complaint made against a British subject for a breach of those regulations, and may enforce payment of any fine incurred by that subject or person in respect of that breach, in like manner, as nearly as may be, as if that breach were by this Order declared to be an offence against this Order.

(2.) In any such case the fine recovered shall, notwithstanding anything in this Order, be disposed of and applied in manner provided by those regulations.

157. Every person subject to the criminal jurisdiction of the Court who prints, publishes, or offers for sale any printed or written newspaper or other publication containing matter calculated to excite tumult or disorder, or to excite enmity between Her Majesty's subjects and the Government of any part of the Ottoman dominions, or between that Government and its subjects, shall be guilty of an offence against this Order, and may, in addition to or in lieu of any other punishment, be ordered to give security for good behaviour; and in default thereof, or on a further conviction for the like offence, he may be ordered to be deported.

An offence against this Article shall not be tried except by the Supreme Court.

Part VII.—Miscellaneous.

158.—(1.) If an officer of the Court employed to execute an order loses by neglect or omission the opportunity of executing it, then, on complaint of the person aggrieved, and proof of the fact alleged, the Court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof.

(2.) The order shall be enforced as an order directing payment of money.

159.—(1.) If a clerk or officer of the Court, acting under pretence of the process or authority of the Court, is charged with extortion, or with not paying over money duly levied, or with other misconduct, the Court, if it thinks fit, may inquire into the charge in a summary way, and may for that purpose summon and enforce the attendance of all necessary persons, as in an action, and may make such order for the repayment of any money extorted, or for the payment over of any money levied, and for the payment of such damages and costs, as the Court thinks fit.

(2.) The Court may also, if it thinks fit, on the same inquiry, impose on the clerk or officer such fine, not exceeding £5 for each offence, as the Court thinks fit.

(3.) A clerk or officer punished under this Article shall not be liable to an action in respect of the same matter; and any such action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks fit.

160.—(1.) If any person, subject to the criminal jurisdiction of a Court, does any of the following things, namely:—

(*a*) Wilfully, by act or threat, obstructs an officer of, or person executing any process of, the Court in the performance of his duty; or

(*b*) Within or close to the room or place where the Court is sitting wilfully misbehaves in a violent, threatening, or disrespectful manner, to the disturbance of the Court, or to the intimidation of suitors or others resorting thereto; or

(*c*) Wilfully insults any member of the Court, or any Assessor or juror, or any person acting as a clerk or officer of the Court, during his sitting or attendance in Court, or in his going to or returning from Court; or

(*d*) Does any act in relation to the Supreme Court or a Provincial Court, or a matter pending therein, which, if done in relation to the High Court in England, would be punishable as a contempt of that Court;

He shall be guilty, in the case of the Supreme Court or a Provincial Court of a grave offence, and in the case of a Local Court of an offence, against this Order:

Provided that the Supreme Court or a Provincial Court, if it thinks fit, instead of directing proceedings as for an offence against this Order, may order the offender to be apprehended forthwith, with or without warrant, and on inquiry and consideration, and after the hearing of any defence which such person may offer, without further process or trial, may adjudge him to be punished with a fine not exceeding £10, or with imprisonment not exceeding twenty-four hours, at the discretion of the Court.

(2.) A Minute shall be made and kept of every such case of punishment, according to the facts of the offence, and the extent of the punishment. In the case of a Provincial Court, a copy of the Minute shall be forthwith sent to the Supreme Court, and in a case of a Local Court to the Provincial Court.

(3.) Nothing herein shall interfere with the power of the Court to remove or exclude persons who interrupt or obstruct the proceedings of the Court.

161. Nothing in this Order shall deprive the Court of the right to observe, and to enforce the observance of, or shall deprive any person of the benefit of, any reasonable custom existing in the Ottoman dominions, unless this Order contains some express and specific provision incompatible with the observance thereof.

162. Nothing in this Order shall prevent any Consular officer in the Ottoman dominions from doing anything which Her Majesty's Consuls in

the dominions of any other State in amity with Her Majesty are, for the time being, by law, usage, or sufferance, entitled or enabled to do.

163. The Ambassador and the Judge of the Supreme Court shall have power to make and alter Regulations (to be called Queen's Regulations) for the following purposes, that is to say:—

(1.) For securing the observance of any Treaty for the time being in force relating to any place to which this Order applies, or of any native or local law or custom, whether relating to the trade, commerce, revenue, or any other matter.

(2.) For the peace, order, and good government of British subjects within any such place in relation to matters not provided for by this Order.

(3.) For requiring Returns to be made of the nature, quantity, and value of articles exported from or imported into his district, or any part thereof, by or on account of any British subject who is subject to this Order, or in any British ship, and for prescribing the times and manner at or in which, and the persons by whom, such Returns are to be made.

(4.) For the governance, visitation, care, and superintendence of prisons.

Any Regulations made under this Article may provide for forfeiture of any goods, receptacles, or things in relation to which, or to the contents of which, any breach is committed of such Regulations, or of any Treaty or any native or local law or custom, the observance of which is provided for by such Regulations.

Any Regulation made under this Article shall when allowed by the Secretary of State, and published as he directs, have effect as if contained in this Order.

164.—(1.) Her Majesty's Consuls in the Ottoman dominions may levy dues not exceeding the rate of 2d. a ton on every British merchant-ship (*a*) visiting or passing Constantinople, or visiting any other port in a Consular district, or (*b*) being at any other place within the Consular district of Constantinople, and having occasion to send any seaman to the British hospital at Constantinople.

The produce of the said dues shall be applied towards the establishment, maintenance, and support, in the Ottoman dominions, of British hospitals; and the dues shall be called hospital dues.

The Secretary of State may, by writing under his hand, issue such instructions as to him seem fit, for the following purposes, or any of them (that is to say)—

For fixing (within the limit of 2d. a ton) the rate per ton at which the hospital dues are to be levied at any port;

For exempting any ship in respect whereof, within any defined period, the hospital dues have once been paid, from any further payment thereof;

For regulating the application of the produce of the hospital dues;

For limiting the extent to which any Consul shall exercise jurisdiction over British subjects in the Ottoman dominions in any matter relating to the hospital dues.

(2.) A further fee of 10s. shall be charged at Her Majesty's Consulate at Constantinople for each application for a Firman, or Firmans, for each British ship in order to pass the Straits.

(3.) Any master of a British ship who fails to pay the said dues or fee, or evades the payment thereof, shall be guilty of an offence against this Order, and the amount of such dues or fee, and of any fine imposed, may be levied by seizure and sale of the ship.

(4.) No dues under this Article shall be levied in Egypt unless the Secretary of State shall by order so direct.

165.—(1.) Every British subject resident shall, in January in every year, register himself at the Consulate of the Consular district within which he is resident; provided that—

(*a*) The registration of a man shall comprise the registration of his wife, if living with him; and

(*b*) The registration of the head of a family shall be deemed to comprise the registration of all females and minors being his relatives, in whatever degree, living under the same roof with him at the time of his registration.

(2.) The Consular officer may, without fee, register any British subjects being minors living in the houses of foreigners or Ottoman subjects.

(3.) Every British subject arriving at a place in the Ottoman dominions where there is a Consular office, unless borne on the muster-roll of a British ship there arriving, shall, on the expiration of one month after arrival, be deemed for the purposes of this Article to be resident, and shall register himself accordingly.

(4.) A person shall not be required to register himself oftener than once in a year, reckoned from the 1st January.

(5.) The Consular officer shall yearly give to each person registered by him a certificate of registration, signed by him and sealed with his Consular seal.

(6.) The name of a wife, if her registration is comprised in her husband's, shall, unless in any case the Consular officer sees good reason to the contrary, be indorsed on the husband's certificate.

(7.) The names and descriptions of females and minors whose registration is comprised in that of the head of the family shall, unless in any case the Consular officer sees good reason to the contrary, be indorsed on the certificate of the head of the family.

(8.) In the case of a British-protected person, the date of issue and the duration of the certificate shall be indorsed in Turkish or Arabic on the certificate.

(9.) Every person shall, on every registration of himself, pay a fee of 2s. 6d., or such other fee as the Secretary of State from time to time appoints.

(10.) The amount of the fee may be uniform for all persons, or may vary according to the position and circumstances of different classes, if the Secretary of State from time to time so directs, but may not in any case exceed 5s.

(11.) Every person by this Order required to register himself or herself shall, unless excused by the Consular officer, attend personally for that purpose at the Consulate on each occasion of registration.

(12.) If any person fails to comply with the provisions of this Order respecting registration, and does not excuse his or her failure to the satisfaction of the Consular officer, he or she shall be guilty of an offence against this Order, and any Court or authority may, if it thinks fit, decline to recognise him as a British subject.

166. Except as in this Order otherwise provided, all fees, dues, fines, and other receipts under this Order shall be carried to the public account, and shall be accounted for and paid as the Secretary of State, with the concurrence of the Treasury, directs.

167. Where, by virtue of this Order or otherwise, any Imperial Act, or any Law in force in a British Possession, Colony, or Settlement, is applicable in any place within the limits of this Order, such Act or Law shall be deemed applicable so far only as the constitution and jurisdiction of the Courts acting under this Order and the local circumstances permit, and, for the purpose of facilitating the application of any such Act or Law, it may be construed with such alterations and adaptations not affecting the substance as may be necessary, and anything by such Act or Law required to be done by or to any Court, Judge, officer, or authority may be done by or to a Court, Judge, officer, or authority having the like or analogous functions, or by or to any officer designated by the Court for that purpose, and the seal of the Court may be substituted for any seal required by any such Act or Law; and in case any difficulty occurs in the application of any such Act or Law, it shall be lawful for the Secretary of State to direct by and to whom, and in what manner, anything to be done under such Act or Law is to be done, and such Act or Law shall, in its application to matters arising within the limits of this Order, be construed accordingly.

168. Not later than the 31st March in each year the Judge shall send to the Secretary of State a report on the operation of this Order up to the 31st January in that year, showing for the then last twelve months the number and nature of the proceedings, criminal and civil, taken in the Court under this Order, and the result thereof, and the number and amount of fees received, and containing an abstract of the registration list, and such other information, and being in such form, as the Secretary of State from time to time directs.

169.—(1.) A printed copy of this Order shall be always kept exhibited in a conspicuous place in each Consular office and in each Court-house.

(2.) Printed copies shall be sold at such reasonable price as the Supreme Court directs.

(3.) Judicial notice shall be taken of this Order, and of the commencement thereof, and of the appointment of Consuls, and of the constitution and limits of the Courts and districts, and of Consular seals and signatures, and of any Rules made or in force under this Order, and no proof shall be required of any of such matters.

The provisions of "The Evidence Act, 1851" (14 & 15 Vict. cap. 99), secs. 7 and 11, relating to the proof of judicial and other documents, shall extend and be applied for all purposes as if the Courts, districts, and places to which this Order applies were in a British Colony.

170.—(1.) The Orders in Council mentioned in the Schedule to this Order are hereby repealed, but this repeal shall not—

(i.) Affect the past operation of those Orders, or either of them, or any appointment made, or any right, title, obligation, or liability accrued, or the validity or invalidity of anything done or suffered under any of those Orders, before the making of this Order;

(ii.) Interfere with the institution or prosecution of any proceeding or action, criminal or civil, in respect of any offence committed against, or forfeiture incurred or liability accrued under or in consequence of any provision of any of those Orders, or any Regulation made thereunder;

(iii.) Take away or abridge any protection or benefit given or to be enjoyed in relation thereto.

(2.) Notwithstanding the repeal of the Orders aforesaid, or any other thing in this Order, every Regulation, appointment, and other thing in this Article mentioned, shall continue and be as if this Order had not been made; but so that the same may be revoked, altered, or otherwise dealt with under this Order, as if it had been made or done under this Order.

(3.) Criminal or civil proceedings begun under any of the Orders in Council repealed by this Order, and pending at the time when this Order comes into operation, shall, from and after that time, be regulated by the provisions of this Order, as far as the nature and circumstances of each case admits.

(4.) Lists of jurors and Assessors in force at the passing of this Order shall continue in force until revised and settled under the provisions of this Order.

171.—(1.) This Order shall take effect at the expiration of one month after it is first exhibited in the public office of the Supreme Court at Constantinople.

(2.) For that purpose the Judge of the Supreme Court shall forthwith, on the receipt by him from the Ambassador of a certified printed copy of this Order, cause the same to be affixed and exhibited conspicuously in that office.

(3.) He shall also keep the same so affixed and exhibited during one month from that first exhibition.

(4.) Notice of the time of that first exhibition shall, as soon as practicable, be published in the office of the Agency for Egypt and at each of the Provincial Consulates in such manner as the Supreme Court may direct.

(4.) A certified printed copy of this Order shall also be affixed and exhibited in the public offices of the Consular Courts at Alexandria and Cairo, at the same time (or as near as circumstances admit) at which it is first exhibited at Constantinople. Proof shall not in any proceeding or matter be required that the provisions of this Article have been complied with, nor shall any act or proceeding be invalidated by any failure to comply with any of such provisions.

(6.) The day on which this Order so takes effect is in this Order referred to as the commencement of this Order.

(7.) Where this Order confers power to make any appointment, Order, Rules, or Regulations, or to do any other thing for the purposes of the Order, that power may be exercised at any time after the passing of this Order, so, however, that any such appointment, Order, Rules, or Regulations shall not take effect before the commencement of this Order.

172. This Order may be cited as "The Ottoman Order in Council, 1899."

A. W. FitzRoy.

SCHEDULE.

Orders repealed.

Order made by Her Majesty in Council on the 22nd April 1872, fixing the fee to be levied on application for a Firman for British ships passing the Straits.

"The Ottoman Order in Council, 1873."

Order made by Her Majesty in Council on the 7th July 1874, amending Article 14 of "The Ottoman Order in Council, 1873."

Order made by Her Majesty in Council on the 5th February 1876, suspending the operation of the Ottoman Order in Council as regards matters coming within the jurisdiction of certain Egyptian Courts.

"The Ottoman Order in Council, 1882."

"The Ottoman Order in Council, 1890."

Order made by Her Majesty in Council on the 23rd February 1891, fixing a Table of Fees to be taken in Her Majesty's Consular Courts in the Ottoman dominions.

"The Ottoman Tribunals Order in Council, 1891."

"The Ottoman Dominions (Prisoners Removal) Order in Council, 1895."

"The Ottoman Dominions (Courts) Order in Council, 1895."

"The Ottoman Dominions (Supreme Court) Order in Council, 1896."

Index to Order.

AUTHORITIES REFERRED TO

Amari, Michele	"I Diplomi Arabi de R. Archivio Fiorentino." Florence, 1863.
Ameer Ali, Syed	"Mahommedan Law." Calcutta, 1884.
Aristarchi Bey	"Législation Ottomane." Constantinople, 1873-1881. 7 vols.
Arminjon, P.	"Etrangers et Protégés dans l'Empire Ottoman." Paris, 1903. "Le Code Civil et l'Égypte." Paris, 1904.
Artin Pasha, Yacoub	"La Propriété foncière en Egypte."
Baillie, N. B. E.	"Digest of Moohummudan Law." London, 1875.
Belin	"Etude sur la propriété foncière en pays musulman et spécialement en Turquie." Paris, 1862. 8 vols.
Borelli Bey	"La Législation égyptienne annotée." Paris, 1892.
B. L. J.	"Bulletin de Législation et de Jurisprudence égyptiennes." Alexandria, since 1888.
Butler, Professor A. J.	"The Arab Conquest of Egypt." Oxford, 1902.
Charrière	"Négociations de la France dans le Levant." Paris, 1848-1860. 4 vols.
Clunet	"Journal du Droit International Privé."
Cogordon	"La Nationalité au point de vue des rapports internationaux." Paris, 1889.
Creasy, E. S.	"History of the Ottoman Turks." London, 1854. 2 vols.
De Martens, C. and F. de Cussy	"Recueil de Traités, Conventions et autres actes diplomatiques." Leipzig, 1846. 6 vols.
De Martens, C.	"Le Guide Diplomatique." Leipzig, 1866. 3 vols.
D'Ohsson	"Tableau général de l'Empire Ottoman." Paris, 1788-1824. 8 vols.
De Testa, Baron	"Recueil des traités de la Porte Ottomane avec les Puissances étrangères." Paris, 1864.
Du Rausas, G. P.	"Le Régime des Capitulations dans l'Empire Ottoman." Paris, 1902. 2 vols.
Eliot, Sir C.	"Turkey in Europe." London, 1900.
Engelhardt, E.	"La Turquie et le Tanzimat." Paris, 1882-1884. 2 vols.
Féraud-Giraud	"De la juridictione française dans les Echelles du Levant et de Barbarie." Paris, 1866.
Gatteschi, D.	"Manuale di diritto publico e privato Ottomano." Alexandria, 1865. "Della Proprietá Fondiaria." Alexandria, 1869. Translated by E. A. Van Dyck. London, 1884.

Gélat . . . "Répertoire Annoté de la Législation et de l'Administration égyptienne." Alexandria, 1888-1897.

Gibbon, Edward "The Decline and Fall of the Roman Empire." Edited by J. B. Bury. London, 1896. 7 vols.

Hakluyt, Richard "The Principal Navigations, Voyages, Traffiques, and Discoveries of the English Nation." New edition. Glasgow, 1903.

Hedaya . . . . "The Hedaya or Guide: A Commentary on the Mussulman Laws." Translated by C. Hamilton. London, 1870.

Hertslet . . . . "Commercial Treaties." London.

Heyd . . . . "Histoire du commerce du Levant au moyen âge." French edition. Leipzig, 1886. 2 vols.

Laget . . . "De la condition juridique des Français en Egypte." Paris, 1890.

Lamba, H. . . . "De l'évolution de la condition juridique des Européens en Egypte." Paris, 1896.

Militz . . . . "Manuel des Consuls." London and Berlin, 1837-1842.

Margoliouth, D. S. . "Mohammed, and the Rise of Islam." London, 1905.

Noradounghian, G. . "Recueil d'actes internationaux de l'Empire Ottoman." Paris, 1897. 4 vols.

Pears, E. . . . . "Destruction of the Greek Empire." London, 1903.

Piggot . . . . "Exterritoriality." London, 1892.

Rey, F. . . . . "La Protection diplomatique et consulaire dans les échelles du Levant et de Barbarie." Paris, 1899.

R. O. . . . . "Recueil Officiel des Arrêts de la Cour d'Alexandrie."

Sale, G. . . . . "The Koran." London.

Schopoff, A. . . . "Les Réformes et la Protection des Chrétiens en Turquie, 1673-1904." Paris, 1904.

Tarring, C. J. . . "British Consular Jurisdiction in the East." London, 1887.

Wilson, Sir R. K. . . "An Introduction to the Study of Anglo-Muhammadan Law." London, 1894.

Young, G. . . . . "Corps de Droit Ottoman." Oxford, 1905.

Anonymous . . "Le Régime des Capitulations par un ancien diplomate." Paris, 1898.
"Recueil des Décrets et Documents Officiels intéressant le Ministère de la Justice." Cairo, 1889.
"United States Consular Report," presented by E. C. Van Dyck. Washington, 1862.
Blue Books.
Judicial Adviser's Reports.

INDEX

WILLIAM GREEN AND SONS, PRINTERS, EDINBURGH.